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OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

THE OWNER-OPERATOR PROBLEM AND THE NATIONAL RECOVERY ADMINISTRATION

By
Maurice Rabinovitz

(A Section of Part D: Control of Other Conditions of Employment)

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Work Materials No. 45 falls into the following parts:

Part A: Introduction
Part B: Control of Hours and Reemployment
Part C: Control of Wages
Part D: Control of Other Conditions of Employment
Part E: Section 7 (a) of the Recovery Act

LABOR STUDIES SECTION
March, 1936

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F O R E W O R D

This study on "The Owner-Operator Problem and the National Recovery Administration" was prepared by Mr. Maurice Rabinovitz of the Labor Studies Section, Mr. Solomon Barkin in charge.

In many instances the success of code labor provisions depended upon their observance by the employer not only with respect to his employees but also with respect to his own working time if he was an "owner-operator". Various provisions were developed to assure compliance with the labor provisions by employers when acting as employees. Varying methods of enforcement were utilized. This study represents an outline of the more outstanding NRA experiences. All regulation of conditions of employment in industries where the number of owner operators is significant will encounter this problem. The findings of this particular study are of course those of the author and not official utterances.

At the back of this report will be found a brief statement of the studies undertaken by the Division of Review.

L. C. Marshall
Director, Division of Review

March 23, 1936

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INTRODUCTION

The attempt of NRA to achieve the objectives of reducing unemployment, providing workers a higher standard of living, improving conditions of work, and raising the plane of competition presented a difficult issue in control of the owner-operator . The Act specifically provided that the program of control under NRA should not operate to oppress or discriminate against small enterprises (Sec. 3, (a) (2), and prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof. (Sec. 5.). Popular interest was also quite jealous of the "rights of the little fellow." Despite these limiting conditions, the role of the owner-operator in determination of both labor and trade practice standards was sufficiently important to lead NRA to attempt regulation.

This study is an analysis of NRA experience with owner-operator control, with special reference to the control of hours of work and reemployment. All told, provisions were introduced in some 105 codes of fair competition to control the maximum number of hours which proprietor-workers were allowed to devote to "productive work" as distinguished from managerial activities, as well as to regulate the starting and finishing hours of work of proprietors and employees.

The problem of regulating the owner-operator arose early in NRA history in connection with substitute labor standards under the President's Reemployment Agreement, and in negotiations for codes, in cases where industry representatives and/or labor leaders insisted that control provisions be included to help eliminate certain kinds of alleged unfair competition, protect labor standards, and effect a satisfactory measure of reemployment.

CHAPTER I.

NATURE AND SCOPE OF THE PROBLEM.

Industry in general is dominated by large scale establishments and centrally controlled groups of establishments under corporate and holding company charters. Such structural groups employ a majority of the wage earners and account for the bulk of the value added by manufacture. In the field of retail trade, concentration in large units, although less marked, is still an outstanding feature. Despite the dominance of large employing units, however, the small business unit still predominates in number, and in numerous lines of business is still a factor of importance. Of these small enterprises, a large number are owner operated.

It is not the purpose of this study to inquire into the experience of NRA with small business units in general, but to concentrate attention on the owner operator type of small establishment. The essence of the distinction is that the owner operator is himself typically a worker. He may operate as a lone workman or be assisted, occasionally or even permanently by members of his family and/or outside workers. Thus, in a barber shop the owner operator works at the trade and manages the shop; in a retail store he stands behind the sales counter; as a master plumber or electrician, in addition to managing the business he helps to install and repair fixtures; as a bakery operator he both bakes and sells; and in a printing shop he solicits trade and sets type.

There is a wide variety of types of owner-operators, the differences being largely determined by the nature of the trades or industries in which they are engaged. As reflecting differences in the problem of control, three types of owner-operators may be distinguished; (1) the one-man operator, (2) the family operator and (3) the employer-operator.

The one-man operator performs all the work himself. The industries and trades designate him by a variety of titles. In the tile industry he is the "wheel-barrow contractor"; in photography, "bathtub operator"; in printing "bedroom operator"; in the broom industry, "a buckeye"; in moving picture, "the portables"; barber trade, "one chair shop"; trucking, "fly by night operator"; electrical industry and bituminous coal, "snow bird"; and dental laboratory, "one-man laboratory."

The small family establishment is an elaboration of the one-man operator unit. In some types of business peak loads or concurrent activities requiring close attention make one-man operation impossible or impracticable. The corner grocery and the retail bake shop are illustrations. In other cases, home work or shop work with family assistance, as may be found for example in the embroidery trade, makes possible some degree of specialization and larger family income.

The employer-operator employs either permanently or occasionally one or more assistants outside the family circle. The number of such workers seldom exceeds five. This limit is set somewhat arbitrarily, but typically the employer of more than five permanent workers, himself becomes primarily a proprietor or manager rather than to continue to make a hand in the establishment.

In some lines of business the employer operator retains workers on a relatively permanent basis, but in other lines of business, for example construction work, employment tends more commonly to be on a job basis. A considerable amount of shifting of status occurs between employee and owner-operator. Journeymen, unable to obtain regular employment frequently become "self employed." journeymen, and owner-operators in great numbers shift to the status of employees.

A. EXTENT OF OWNER-OPERATOR COMPETITION

Data are not available by which it is possible to make an exhaustive analysis of the numerical and competitive importance of the owner-operator type of unit in different lines of industry and trade. Since 1919 the censuses of manufacture do not cover establishments whose gross income is less than $5,000. per annum. The earnings of most owner-operators fall below that amount. The owner-operator type of establishment does not lend itself to the collection of factual data. Few such establishments maintain records necessary to accurate and detailed reports. Furthermore, a considerable proportion of such business units are not listed in directories and consequently are not approached for information.

Trade association data are by no means complete and they do not always reflect unbiased viewpoints. The case of the dental laboratory industry may be cited as an example. Data presented by the leading trade association differ markedly from those submitted by an organization which purposted to represent the owner-operators. Whereas, the former estimated the number of one-man laboratories to be approximately 1,150 in a total of 3,225 establishments, the latter alleged that "the predominating majority of units in this industry are of the one-man type.

The lack of specific information about industries in which casual information indicates the owner-operator is a significant factor, constitutes a major source of difficulty in analyzing the problem, and of developing methods of dealing with it. The fact that some 105 codes contained provisions predicated on the assumed necessity of controlling the operating hours of the working employers and members of their families is evidence of the widespread character of the problem. The limitations of this study, and paucity of information do not permit analysis of every industry in which control provisions were inserted in codes. Enough is known, however, to establish the fact that in many instances code provisions were introduced for industries in which the owner operator problem was by no means acute. The following statistical analysis is limited to industries in which the problem of owner-operator is known to have been a relatively acute issue.

The industries studies, fall into the following groups: (1) service trades; (2) trucking; (3) retail trades; (4) food manufacturing; (5) graphic arts; (6) manufacturing, (a) specialty-job order, (b) standard stock; (7) construction.

1. Service Trades

The very nature of service establishments, consisting of such enterprises as barber shops, beauty parlors, shoe rebuilding establishments, hand laundries, window cleaning service, shoe-shine establishments, in addition to a large number of others, encourages the existence of small units. The competition in this field centers among the small units themselves. The word "large" when applied to a service trade is a relative term inasmuch as three or four workers constitute a fairly substantial personnel.

The income of service establishments and the profits and earnings of their proprietors and workers are small. This fact is suggested by analysis of the U. S. Census report for 1933 covering a large number of service occupations and trades, including personal services, business services, mechanical repair services, and a large miscellaneous group. (*)

Out of a total of 443,217 establishments surveyed within the service group, 227,440 or approximately 51% of the total reported annual gross receipts for 1933 as ranging between $1,000 to $5,000 per establishment; [illegible] 161,202 establishments or 36-4/10% of the total reported receipts of less than $1,000 per establishment; thus 388,642 or 87-7/10% of the total number of establishments surveyed reported earnings of less than $5,000 for that year.

Undoubtedly a substantial number of the establishments surveyed were in the catagory of small enterprises and not strictly one-man operator units. Many of the establishments employed one, two, or perhaps more persons. It may be questioned whether the receipts of such establishments covered a livelihood to the proprietor or to his workers. The average annual earnings of the employed personnel reported for these trades was so low as to raise these questions.

The following four service trades are used to illustrate the extent of the owner-operator problem in this field: (1) barber trade, (2) cleaning and pressing trade, (3) shoe rebuilding trade, (4)beauty shop trade. These cases are selected because of all the personal service trades enumerated by the Census of American Business (Service, Amusements and Hotels, 1933), they are the most important in the number of establishments, proprietors and employees. An analysis of the relationship between the number of units and the distribution of annual gross receipts emphasizes the highly competitive nature of these small owner-operated enterprises and the probable effect of such intensive competition upon the income of proprietors and earnings of workers in these trades.

(*) Census of American Business, 1933, Services, Amusements, and Hotels Published May, 1935, U. S. Dept. of Commerce.

This analysis is statistically presented by Tables I, II, III, and IV. (Appendix A)

Table I indicates that the overwhelming majority of establishments in these important service trades are owner-operated. This fact is indicated by the column "average full time employees per establishment." Only one of the four trades - beauty shops, averaged one employee per establishment, barber shops and cleaning trades, each averaged slightly more than one-half of one employee per enterprise. The shoe rebuilding trade, which is practically dominated by one-man operator establishments, showed an average of only .26% full time employee per establishment.

The slight excess of proprietors over the number of establishments indicated by Table I is explained by the existance of partnerships and cooperatives. Part-time employees included in Table I represents persons employed only a few hours or days of the normal work week or other payroll period.

Table II, "Distribution of Establishments by volume of Receipts" shows two important facts. The first is that most of the establishments enumerated are in the group reporting less than $5,000 annual gross receipts and that approximately 35% of the total number of establishments enumerated in each industry, received less than $1,000.00 per establishment. The second fact revealed by this table is that in three of these trades - barber shop, cleaning, pressing, etc., and shoe rebuilding, more than 50% of the total dollar volume of business went to establishments grossing less than $5,000;00 per year, whereas the fourth group in this classification - beauty shops - reported 48.6% of the total dollar volume.

Table III, Distribution of total receipts and wages, plainly shows that both entrepreneurs and employed workers in these fields received in return for their services amounts far less than that specified by the United States Bureau of Labor Statistics as necessary to maintain a decent standard of living. Among these groups the highest average annual net earnings per proprietor found in beauty shops, was $972.00. The lowest, $572.00 is found in shoe rebuilders trade. The average annual wage for full time employees in this group did not fluctuate to the same extent as in the case of proprietors' not earnings, the highest average annual wage (beauty shops) being $834.00 as compared with the lowest - $730.00 (barber shop trade). The average annual net earnings per proprietor for all four industries was $679.28 as compared with an average annual wages for full time employees in all the industries, of $767.75.

It is true, of course, that in two of the trades, barber shops and beauty establishments, the income of wage earners (and to a lesser extent proprietor-workers) is augmented by gratuities; but it may fairly be questioned if this method of increasing low earnings has proved satisfactory. Certainly, this system of obtaining revenue is not dependable as a source of income, especially during periods of economic distress.

Moreover, not all service trades or industries are affected by gratuities. For example, in the case of the four trades cited, two of them, shoe rebuilding, and cleaning and pressing, are not characterized by the giving of "tips".

Table IV, "Increase in Establishments - 1929-1933" is signigicant because it attempts to portray the possible relation between economic depression and the increase of small, owner-operated service establishments, where relatively little capital is required and machinery and equipment may be purchased on liberal installment terms. Obviously, the picture indicated by this Table is not complete. The tabulation shows the number of establishments opened in 1930, 1931, 1932 and 1933 as well as those which operated from 1929 through 1933; but there is no way of gauging the number of establishments (undoubtedly considerable) which opened and failed within brief periods during this time.

More than one-third of the establishments in operation in 1933 were organized subsequent to 1929. Many of them are small and definitely in the owner-operator category. While it is hazardous to draw conclusions, the increase in so many establishments during the depression period suggests the entrance of many persons drawn from other industries and trades, who were unable to earn a living and were attracted by the ease with which it was possible to establish themselves as entrepreneurs in the service industries.

The statistical analysis presented by Tables I to IV inclusive carries with it several challenging questions. In view of the low earnings of the proprietors and workers, is there a limit to the number of small service units which it is economically desirable and socially wise for a community to have? When factual data shows the borderline has been reached, should the Federal Government or the states through agencies best suited for the purpose, restrict further entrance to such fields on the basis of public interest, necessity and convenience? These questions were raised by Mr. Justice Brandeis in the New State Ice Company vs. Liebmann case, (*) decided March 21, 1932. In a dissenting opinion in which he discussed the right of the State of Oklahoma to restrict the freedom of persons to engage in the ice business without having first secured a license, Justice Brandeis stated:

> "There are many proposals for stabilization. And some thoughtful men of wide business experience insist that all projects for stabilization and proration must prove futile unless, in some way, the equivalent or the certificate of public convenience and necessity is made a prerequisite to embarking new capital in an industry in which the capacity already exceeds the production schedules."

(*) New State Ice Company v. Liebmann, 285 U. S. 262.

The questions raised are important and are vitally concerned with the general problem of owner operator regulation.

2. Commercial Trucking

A statistical analysis of the owner-operator problem in the trucking industry might appropriately be prefaced by the following extremely pertinent extract from the letter of transmittal which accompanied the Trucking Code of Fair Competition:

> "In contrast with other major forms of transportation, the trucking industry is typically a small unit, owner operated and flexible type of transportation activity. The natural operation of these factors has produced a disorganized condition within the industry, resulting in unstable competitive conditions. Not only has this situation tended to produce destructive competitive conditions within the industry, but the influences have extended substantially beyond the industry itself and have created particularly complex problems with relation to the coordination and regulation of various transportation agencies. To date, no complete and accurate data have been available to serve as a basis for the solution of these complex problems."

As in the case of other industries it is difficult to present a thoroughly complete and accurate statistical picture. Enumerators fail to reach all owner-operators in this field, and there is a great deal of overlapping by reasons of registration of the same truck in more than one state. With notation of such limitations a number of sources of information are cited below as evidence on the nature and scope of the problem.

While the several estimates vary as to the exact number of owner-operator enterprises engaged in trucking, all point to the fact that the one-man enterprises consisting of individuals who own and operate a single vehicle constitute between 80 and 90% of all commercial trucking establishments.

Thus, one estimate shows the following:

(*) Total number of truck owners.....	2,168,886	100%--total
Number of owners of one truck.....	1,896,886	87% of "
Number of owners of two or more trucks.....	272,000	13% of "

Statistics gathered in the industry during NRA indicates that 83% of members are one-truck operators and that the average ownership in the industry is 1.6 vehicle per member.(**)

(*) Source: 1928 edition of "AUTOMOBILE FACTS AND FIGURES" covers survey for 1927.

(**) Based on registrations under Code. - Trucking Code History.

The American Trucking Association, Inc., estimates that operators of one truck constitute 66.8 of all enterprises engaged in interstate operations. This group owned 25.8% of all vehicles registered in this field. The percentage for purely intrastate activities was estimated as still higher.

Based on data obtained from an analysis of registrations under the Code, it appears that:(*)

(a) Average number of trucks per registrant....1.61
(b) Highest average in number of trucks per owner 2.68 (La.)
(c) Lowest average in number of trucks per owner 1.11 (Me)

The extent of owner-operator competition in this field is further illustrated by reference to Tables 5 and 6, (Appendix B). These show the percentage of total trucks registered by "for hire" trucking enterprises in a group of representative states, in the eastern and western parts of the United States by owner-operator enterprises, one truck per establishment.

Table 5 points out that 85% of all for hire trucking enterprises registered in the States of Minnesota, Missouri, Iowa, Nebraska and Kansas were one truck establishments, i.e. owner-drivers who possessed but one vehicle.(**)

Table 6 indicates that 80% of the "for hire" trucking enterprises registered in the States of New York, New Jersey, Pennsylvania, Ohio and Michigan were in this classification. (***)

An analysis made of registration data for Ohio, Indiana, Illinois, Michigan and Wisconsin indicates that out of 45,697 enterprises, 37,552 or 82.8 reported having one employee. (****)

With respect to trucking enterprises engaged in interstate operations, an examination of tables compiled on the basis of Code registration shows that for the country as a whole the 7.6% large enterprises, operating 47.7% of the vehicles, employed 55.6% of the employees of the interstate enterprises, while the 92.4% of the enterprises, with 52.3% of the vehicles employed but 44.4% of the workers.(*****)

(*) This analysis was not based on total registrations but represented a substantial portion of registered vehicles
(**) Source: Trucking Code History - Appendix
(***) Source: Ibid.
(****) Source: Ibid. One-truck enterprises conducted by one man considered as establishments with one employee
(*****) These figures take into account the one-truck owner who himself drives. In collection of the registration information, in most cases the owner-driver registered as an employee Trucking Code History.

These facts are cited to show that the competitive problem in the trucking industry is two-fold; first, the field has a tremendous number of individuals each owning one truck, who, on the basis of intense competition, try to eke out a living as best they can; secondly, these entreprenuer-drivers are engaged in direct competition with a small number of large firms which, however, employ a considerable portion of all truck drivers in the industry.

Additional data to show the extent of owner-operator competition in trucking is presented by the Census of American Business, 1933- Services, Amusements and Hotels. (*)

The information collected by this survey, which included cartage and trucking establishments as a business service enumerated 23,102 establishments with 25,196 proprietors, 39,291 full-time employees and 20,478 part-time workers. On the basis of the factual data reported it was found that for 1933 the establishments enumerated showed average net annual earnings per proprietor, $1208., average annual wages for full-time employees $1182. and average annual wages for part-time employees $523. The extent of owner-operator activities in this field is further emphasized by the following facts. Out of the total number of 23,102 establishments enumerated, 10,794 or 21.4% reported gross receipts of between $1000 and $4,999 and 6,757 or 34.2% received less than $1,000 for the year. The low earnings of these owner-operators may be gauged by reference to the fact that out of a total volume of gross receipts amounting to $174,875,000, the 34.2% in the $1,000 to $4,999 group received only $24,322,000 or 7.2% and their even less fortunate competitors in the category below $1,000 per annum received $3,767,000 or 4.6%. There can be no doubt that in this lowest bracket at least the terms establishment and proprietor are synonomous. Thus, if this report may be accepted as typical the average annual gross receipts of about one-third of all proprietors in this field is the startlingly low amount of $575. This, when coupled with the fact that the survey showed an increase of 34.1% in new enterprises between 1929 and 1933, would seem to support the contention of the American Trucking Associations, Inc., made in a letter previously cited but repeated because of its pertinence:(**)

(*) Volume I

(**) Letter, Ted. V. Rogers, President, American Trucking Associations, Inc., Washington to Dr. E. Christopher Meyer, N.R.A., October 7,1933. N.R.A. Files---Trucking Code.

"There is a tremendous number of very small operators. This has become increasingly true during this period of depression, when thousands of individuals, finding themselves out of employment have invested some or all of their savings in a motor truck with the idea of making a living by hiring out their services in the carriage of goods. In general, their savings have been enough only to make a small down payment on the truck. It is also true that many individuals who formerly were private carriers, including many farmers, finding their business drastically reduced, have taken their trucks and gone into the "for hire" business. Neither of these classes of new competition in the industry know anything at all about costs and in general proceed on the assumption that if they have a dollar or two left at the end of the day they are making something. This kind of competition from what is called the owner-operator has destroyed the stability of the industry and is one of the chief factors responsible for the present chaotic conditions. The ventures of these individuals generally result in the loss of their investment in the truck, and no one really profits by it."

There can be little doubt, therefore, whatever the argument for or against the owner-operator in this field, his presence and activities constitute one of the industry's major problems.

3. Retail Trade

It is estimated that approximately 85% of all the stores in the United States are composed of small independent establishments with five or fewer full-time employees including proprietors. (*) Within this group are thousands of units varying in size from one-man organizations and enterprises conducted by the proprietor and members of his family to establishments with one or two outside employees. Among these, the owner-operator problem is found.

It is difficult in the retail field to present a clear-cut statistical distinction between the owner-operator units and small enterprises in general. However, if it may be assumed that the average independent retail store with five or fewer employees in which the proprietor is actively engaged in the duties of a worker, is in the nature of an "owner-operator" enterprise, some information is available. These data show that the 85% of enterprises which are composed of less than five employees exceed one and one-quarter million establishments and that approximately 95% of all proprietors of independent retail stores are found in this group, which however, employs only about 30% of the full-time workers. The remaining 15% of retail establishments consist of independent stores with more than five employees as well as all chain stores. (**)

Within the group comprising the 85% are many thousands of one-man establishments, family enterprises, and small units operated by proprietors with one or two employees.

The one-man establishments consist mostly of concessionaires, stalls, so-called "hole in the wall" stores, news-stands and specialty stores. The family and small unit groups include general, shoe, paint, automobile accessories, grocery, delicatessen, meat and hardware stores, novelty and millinery shops, and others.

The 1930 Retail Census of Distribution covering approximately 1,543,000 stores with a total sales volume amounting to over $49,000,000,000 has estimated that 43% of these stores do an annual business of less than $10,000 and that the aggregate sales of these 43% is 5.69% of the total. To gauge the financial possibilities of the average owner-operator store the survey has divided all the stores into two major groups each covering approximately 770,000 establishments. In the first group - the category with which this report concerns itself, the maximum sales volume per year is estimated at $12,000 with a $5,500 average. The second group begins at $12,000 and includes the large enterprises which do a considerable volume of business.

Apropos of the owner-operator problem, the Retail Census estimates that a store with a sales volume of $12,000 can provide a modest living for its proprietor providing the following three factors are present:

(*) Retail Code History. Based on special tabulation by Census Bureau. Table 7

(**) Retail Code History.
Based on special tabulation by Census Bureau. See Table 7

(1) the proprietor performs the duties of a worker in lieu of a paid employee; (2) the proprietor, in addition to the productive services rendered, understands his business and can select and sell merchandise with at least average ability; (3) the proprietor possesses sufficient capital to cover average investment in merchandise, fixtures and accounts.

This census further estimates that the gross margin on a $12,000 volume of sales averages $3,000; thus the cost of merchandise which must be replaced as it is sold approximates $9,000. A further estimate assigns $1,250 to cover operating expenses including rent, insurance, taxes, repairs, upkeep of premises, light, heat, power, communication, occasional advertising, etc. The margin remaining for payroll and profit to the owner-operator with an average gross sales volume of $12,000 is $1,750. This would be sufficient to provide a modest livelihood were it not for the fact that a store doing $12,000 annual business requires two sales people. If the owner-operator can utilize the services of members of his family, the $1,750 is available as compensation for his services and profits on his investment, but if he is unable to do this he must of necessity engage one full-time worker and a part-time worker. The owner-operator, under such circumstances, realizes only that part of $1,750 which remains after the wages are paid to his employees.

If any conclusion may be reached on the basis of these estimates it is that in many cases even an efficiently operated $12,000 store can provide but a limited wage for any of the persons connected with it, whether they are employees, members of the proprietor's family or the owner-operator himself. Furthermore, the analysis presented above applies to establishments doing a volume of business amounting to $12,000. The census estimates that only a few within the 770,000 establishments grouped under this classification reached this figure; that the annual average sales volume in the stores of this group was $5,500 but that approximately 419,000 out of the 770,000 establishments within the $12,000 group reported a sales volume of less than $5,000 with an average of less than $2,500.

A considerable number of retail stores obviously fail to earn a proper livelihood for their proprietors and others connected with the establishments. The number of such stores is not as large, however, as would be supposed by a cursory examination of the data as presented. Many types of stores within the low earning range can survive indefinitely. Some of them are not necessarily losing enterprises. Their ability to adjust themselves is due to a number of factors. Among such factors are ability to convert or process goods into other forms than that in which originally purchased; perform service functions in addition to the selling of goods; and in various ways hold down the cost of goods as low as possible. Within the lowest earning group of stores chances of survival are based on one or a combination of the factors listed above. It is among the small stores which do not engage in processing activities, or servicing functions, and where the volume of sales is so low as to be under the level required to remain in business that the mortality is the highest within the retail field.

A factor of great importance which permits thousands of owner-operator enterprises to exist in the face of seeming inability to earn money, is the fact that they are not established for the purposes of earning a full livelihood for their owners. Some are organized to provide supplementary

income to persons whose chief source of livelihood is derived from other fields. A number of these stores are opened to obtain for the proprietor's family wholesale prices on supplies such as food and clothing, the proprietor himself being engaged in other activities. Many of them, particularly among the small general stores in rural communities, provide a medium for the sale of products of the farm, dairy, or small manufacturing enterprises in which the proprietor is engaged. Some establishments augment the earnings received by their proprietors who are engaged in highly seasonal occupations.

There is a strong argument for the existence of such enterprises inasmuch as frequently they provide the additional means whereby thousands of families can exist. Moreover, it is fairly certain that such establishments can never control any considerable portion of most lines of retail business, nor is it probable that the number and volume of business will grow to any appreciable extent beyond present proportions, because there will always be a limit to the number and financial ability of persons willing to undertake retail enterprises under such limited prospects. On the other hand, it is equally true that to some extent the collective competitive influence of these establishments upon stores engaged entirely in the business of selling merchandise for the purpose of earning a livelihood for proprietor and workers is such as to provide at least some basis for an allegation of unfair competition.

Viewed as a general proposition in its application to the entire retail field, the owner-operator problem is, however, undoubtedly important. Out of a total of 5,700,985 persons engaged in retail trade during 1933, 1,574,341 or 27.6% were proprietors. (*) Further evidence of the importance of the problem is presented statistically in Tables 7 to 10 inclusive (Appendix C.)

Table VII presents a comparative percentage analysis of independent stores which have five or fewer employees including proprietors with independent stores having more than 5 employees, as well as all chain stores. This Table shows that 84.4% of all the stores surveyed belong in the category of those having 5 or fewer employees; that these establishments have 94.7% of all proprietors but only 30.8% of full-time employees.

Table VIII shows the ratio of establishments within the first group listed in Table VII to the total number of establishments in each respective group, on the basis of percentages. This Table indicates that 21 different types of stores come under this classification, i.e., 5 or less employees per establishment (including proprietor).

Table IX - "Major divisions in retail trade which average less than 5 employees per establishment," presents a breakdown into 12 types of retail stores on the basis of sales volume, number of stores, full-time employees and average number of employees. Within these 12 divisions and groups the highest average of full-time employees is 4.9% in the surgical instrument stores and the scale falls as low as 1.2% in the general and dry goods

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(*) Census of American Business, 1933 - Retail Distribution, Volume I, Also Retail Code History.

stores division which is apparently a one-man operator unit.

Table X presents an estimate with regard to the number of retail establishments on the basis of dollar volume of business. This estimate was contained in an exhibit submitted by A. D. Whiteside, Division Administrator, in connection with a report forwarded to the Administrator of the NRA - "Outstanding Impressions drawn from the general Retail and Retail Drug Hearings, September 14, 1933." and shows that out of 1,499, 620 establishments a total of 574,621, or 38.3% reported a dollar volume of less than $1,000 and that 429,121 or 28.6% of the total number reported less than $500.

4. Other Industries

The remaining industries for which statistical data are presented to indicate to some extent the degree of owner-operator competition are: food manufacturing, graphic arts, manufacturing and construction.

For a number of reasons, chiefly the inability to secure appropriate material, it is impossible to present an elaborate or detailed survey in connection with these industries. The difficulties involved in obtaining satisfactory data are mentioned elsewhere in this Chapter. Pertinent data are decidedly limited in the construction, small manufacturing and commercial printing industries.

Tables 11 to 18 inclusive (appendices E to H) afford the reader a somewhat cursory gauge of the extent of owner operator competition in the industries listed above. For each of these groups of industries and trades, with the exception of construction, two tables are incorporated; the first, entitled "Wages Earners, Salaried Officers and Employees in Establishments with Five or Fewer Employees (1933)" is based on data selected from the Census of Manufactures, 1933 and the second, called "Establishments of Five or Fewer Employees by Wage Earners and Weekly Earnings - Selected States," is based on a special census conducted in the States of Massachusetts, Ohio and North Carolina in the early days of the President's Reemployment Agreement.

Tables 11 and 12 cover the food industries; 13 and 14 refer to graphic arts; 15 and 16 deal with manufacturing enterprises of the type in which owner-operator competition exists.

Table 17 supplies data for the building construction in California based on a special tabulation of trade association information. This table covers a distribution on the basis of NRA registrations and telephone listings. Table 18 presents PRA census data for building construction in three selected states comparable to those cited in connection with the food manufacturing and graphic arts industries.

a. Food Industries. Among the food industries the owner-operator problem is especially significant in baking. The Census of Manufactures for 1933 reports 14,483 bakery establishments. The National Bakers Council (*)

(*)Former Code Authority. Estimate based on code authority mailing lists and covers only bakeries included under the Census of Manufactures' classificatio i.e. bread, cakes, pies, etc., as distinguished from establishments manufacturing pretzels and crackers.

estimated the number of bakery establishments in operation at about 35,000.

Thus, assuming that the lists of the National Bakers Council are accurate and complete and if comparable industries or trades may serve as a parallel for the assumption that in establishments with less than $5,000.00 per annum gross income the proprietor is also a worker, approximately 20,000 bakeries in 1933 were definitely in the owner operator category.

Table #11 is based on special tabulations from Census of Manufactures for 1933. Out of a total of 36,606 establishments enumerated in the beverages (nonalcoholic), confecionery, baking confectionery industries, 21,933 or almost 60% are in the group which had five or fewer employees each.

Table #12 which covers the beverages, bread and bakery, confectionery, flour and grain and meat packing industries and is based on the PRA census cited above shows a distribution of establishments with five or fewer employees by wage earners and weekly earnings. In most of these industries the proportion of establishments with five or fewer employees is shown to be relatively high; for example, in the beverages industry the establishments with five or fewer employees constitute approximately 51 percent of the total; in the confectionery industry the percentage is 31 and in flour and grain it is about 54. The preponderance of owner operator establishments in this field is further evidenced by reference to the baking industry which shows that about 22% of all establishments enumerated are in the group of five or fewer employees, but that this group has only 2.3 percent of the total number of employees. The highest average number of wage earners per establishment is 4.3 (baking, North Carolina) and the lowest 1.9 (confectionery, Ohio).

b. Graphic Arts. No definite data are available with reference to the extent of owner-operator establishments in the graphic arts industries. It is estimated that between ten and fifteen thousand commercial printing establishments properly fall into this category. (*) Tables 13 and 14 which employ the same sources of information as used in Tables 11 and 12, present analogous data for the graphic arts industries. The divisions of the industry covered by Tables 13 and 14 are: 1. commercial or job printing, 2. book publishing and printing and 3, newspapers and periodicals.

c. Manufacturing Industries. General data similar to those shown for the good and graphic arts industries are presented for a number of manufacturing industries through Tables 15 and 16. Because of the diversity of these industries and the lack of more specific information, no attempt is here made to analyze the extent of owner-operator competition. The nature of the owner-operator problem in some of these manufacturing industries is discussed somewhat in detail in connection with the testimony of industry and labor leaders at code hearings. (**)

(*) Estimate based on verbal information secured from officials of the International Typographical Union, which is allegedly supported by data in the files of that Organization.

(**) Chapter II - NRA Program of Control.

Tables 15 and 16 present only fragmantory data. The former, based on Census of Manufactures data covers the jewelry, fur, toys and embroideries, schiffili industries and the latter, based on the PRA census presents information for the mens's clothing, women's clothing, soap, boots and shoes (other than rubber), leather, electrical machinery, motor vehicle bodies and parts and foundry and machine shops industries.

d. Construction. The owner-operator is a problem of relatively large proportions in the construction industry, particularly in the specialty contracting industries. No reliable data are available with respect to the number of persons engaged in the construction industry. Exceedingly limited information is supplied by the Census of Construction, 1930, but this source does not undertake any breakdown to show the number of bona-fide employees, self-employed journeymen and so called "curbstone contractors." Estimates vary with regard to the total number of wage earners (including one-man operators) in the industry. The number probably falls between 3,000,000 and 3,800,000.

It is impossible to guage precisely the number of one-man contractors and their counterpart in the journeyman classification - the self-employed journeymen. There is no doubt, however, that the total represents a significant proportion.

Some fragmentary data are cited from various sources.

Tile Setting. Information obtained from the Tile and Mantle Contractors Association of America, Inc., (*) is probably indicative of the extent of owner-operator competition in this field. An estimate based on a partial survey conducted by this organization shows that out of a total of 2,700 tile contractors 1,100 or 40.7% were one-man operators. These 1,100 operators, however, secured approximately 24 percent of the total volume of orders for work during the period covered by the survey.

Painting and Paperhanging. No breakdown is available with reference to the number of owner-operators in this industry. The very nature of the painting and paperhanging industry supports the assumption that the percentage of owner-operators of the total number of painting and paperhanging establishments is exceedingly high. The former code authority estimated approximately 70,000 "members of the industry" in 1933, and about 300,000 "workers." There is no doubt that a substantial number of the former were "one-man contractors" and that a large percentage of the latter group constituted "self-employed journeymen", that is journeymen workers who between jobs in the employ of contractors on a wage basis, contracted for the performance of work on a job basis.

Trade Association Data On Distribution Of Specialty Contracting Industries In California

Table #17, is based on a special tabulation of trade association information covering a distribution of nine principal specialty contracting

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(*) Trade association with headquarters in Washington, D. C.

industries in California counteis of 60,000 and over population. These industries, all divisions of the basic NRA Construction Code (No. 244 Volume 5 Approved Codes) are: Electrical Contracting, Heating and Piping, Mason Contractors, Painting and Decorating, Plastering and Lathing, Plumbing Contracting, Roofing and Sheet Metal, Tile Contracting and Wood Flooring. The data furnished in this table are included in a report submitted to the NRA by G. F. Ashley, Acting Administration Member for the Construction Industry and the Pacific Coast Regional Supervisor under date of August 20, 1935. The salient feature of this table, the relationship between the character of the industries, registrations and telephone listings, is discussed in the summary comment by Mr. Ashley incorporated as a supplement to the Table.

PRA Census for Selected States. Table #18 presents PRA data on the building Construction Industry for the States of Massachusetts, Ohio and North Carolina. An exceedingly rough and limited analysis is presented here with regard to the general distribution of establishments and wage earners in the building Construction Industry. This table indicates that the percentage of establishments with five or fewer employees was: Massachusetts, 67; Ohio, 72; and North Carolina, 82.

B PROBLEMS OF CONTROL

In what respects and from what standpoints is the owner-operator a problem? One of the major complaints against the owner operator is that he too frequently fails to maintain desirable or necessary standards of workmanship, quality of product, or sanitary conditions and thus endangers or undermines the public health, safety and standards of service.

It is further charged that his methods of doing business too frequently so undermines competitive standards as to destroy public interest or confidence in a commodity or service and thus reduce the total volume of business and income that a given industry or trade might otherwise command.

Another complaint is that his presence in any considerable number in an industry tends to create and maintain such low standards of competition as to render impossible a decent livelihood to the owner operator himself, and maintains socially undesirable and unnecessarily long hours of work. In short, competitive pressure tends in many industries and trades to maintain owner operators in a depressed or "seated" condition.

Competition of owner-operators is assumed also to make difficult and sometimes impossible the maintenance of socially desirable labor standards, and public service by the larger units in the industry or trade which give employment to the bulk of the workers.

In summary, control is sought to protect and better serve the public, to raise labor standards and to promote a more effective and profitable use of economic resources.

The problem of control derives in part from difficulties of precise measurement in the different lines of industry and trade, and the determination of practicable standards or objectives of control. A further problem is the development of methods of control that are practicable administration.

A still more difficult problem derives, however, from the conflict between a theory of formal control and the philosophy of individualism. A few generations ago American industry was typically small scale, and a major portion was of the owner operator type. America was developed on the basis of individual initiative and enterprise. It has been traditionally assumed that hard work, thrift and business acumen would enable an individual to start business in a small way and gradually attain a state of independent competence if not wealth, power and the control of a large enterprise. Significant vestiges of this traditional viewpoint persist, and conflict with demands for public regulation of individual enterprise of the owner operator type.

In individual cases, and to different degrees in different lines of industry and trade, present owner operators are beginners in the traditional historical sense outlined above. That is, an unpredictable number of these operators will become operators of independent competence in the future. In some lines of endeavor possibilities of advancement

are still open. In many other lines, however, it would appear that the typical owner operator is doomed to a "sweated" existence. Adaptation of a program of control to the variable possibilities for personal advancement is another element of difficulty.

As previously noted, although the NIRA provided for a sweeping program of industrial control, special clauses were introduced to protect the small enterpriser; to conserve as fully as possible the virtues of indicidual enterprise. On the other hand, the attempt to develop and stabilize higher labor and competitive standards through worker organizations and trade associations assumes the necessity or desirability of bringing about a practical adjustment between the traditional individual interest and a collective or group interest.

C.OWNER OPERATOR REGULATION PRIOR TO NRA.

Prior to NRA the owner-operator was subjected to a considerable measure of regulation through state laws and municipal ordinances, and by trade associations and trade unions.

With respect to state legislation and municipal ordinances regulation was not directed against owner operators as such, but was incidental to the exercise of police power regulation in general. The only occasion for pointing out such regulations with particular reference to the owner operators is that the imposition of labor standards, commodity and service standards, requirement of financial responsibility, licensing and inspection, use of labels, and promotion of public health and safety tended to curtail activities of those enterprises which could maintain themselves only on the basis of relatively low competitive standards - low labor standards, unsanitary conditions and methods, unsafe methods of operation, substandard quality of service, and failure to meet full financial responsibility for worker or public loss occasioned by their methods and conditions of operation.

The use of the police power to prescribe reasonable regulations needed to protect public health, morals and safety, and to maintain public peace, order and the general welfare provided the legal basis for a wide range of laws and ordinances that directly affected competitive standards and practices. As incidental to police power objectives, regulations in numerous cases prescribed such matters as, the number of hours per day and days per week workers might be employed, the character of buildings or other appurtenances and equipment, physical fitness and technical qualifications of workers, financial responsibility, standards and grades or labeling of merchandise. In some cases, for example laws requiring a state license for horse shoers, the police power was used for the direct purpose of controlling labor supply.

Although regulation of owner operators through police power has for the most part been only incidental to a public welfare objective, the total amount of such regulation prior to NRA was by no means inconsequential. Moreover, it is susceptible of considerable expansion. In general, courts have been quite liberal in interpretations of what constitutes a reasonable use of police power. (*) It is worthy of

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(*) For a thorough discussion of this subject the reader is referred to the case of Francis Barbier, V. Patrick Connelly (113 - U.S. 27) Appendix H.

note, in passing, that during the NRA period numerous trade associations seriously turned to local ordinances to bolster up ineffective NRA regulation.

Both labor unions and trade associations have applied themselves to the task of raising the plane of competition of owner operators with variable degree of success. In general, these attempts at regulation have been essentially voluntary and cooperative in character.

The basic efforts of association and unions were not directed toward the elimination of owner-operators. Many examples can be cited to indicate that those agencies instead of seeking the owner-operator's elimination actually sought to make available to him the channels and benefits of organization. Thus, the barber shop trade presents the interesting phenomenon of a current dispute between the Journeymen Barbers International Union (the workers organization) and the Associated Master Barbers of America (the employers' trade association) concerning the proper organization for membership of the one-chair shop proprietors. The union contends the operator of such establishment is a self-employed journeymen and therefore should belong to the union, whereas the Associated Master Barbers of America classified him as an individual entrepreneur-proprietor.

The International Brotherhood of Teamsters, Chauffeurs and Stablemen of America (a labor organization) has attempted to cope with the problem of thousands of individual truck and taxicab owners by organizing and accepting them as full members. These entrepreneurs in return for the benefits obtained through membership, are required to comply with the Unions' standards and working conditions especially with regard to maximum operating hours.

Other trade unions which have adhered to this policy for a number of years are the Journeymen Tailors Union of America, the International Brotherhood of Bookbinders, the Cigarmakers International Union, United Wall paper crafts, International Metal Engravers, Friendly Society of Engravers, Retail Cleaners, Dyers and Processers Union, Hotel and Restaurant Employees International Alliance and Bartenders International League of America and Amalgamated Butchers, Workmen and Meat Cutters of America. It is to be expected that problems have manifested themselves in connection with the attempted enrollment of owner-operators in union ranks. Difficulty has been experienced in enforcing compliance with union conditions and standards. Occasionally, a basic clash has arisen between owner-operators as a group and workers employed by large concerns on the whole, however, unions have found with regard to establishment of union policy that the benefits in stability accruing to the industry, its members and workers in consequence of the inclusion of these working on own account far outweigh the difficulties involved.

Trade associations, likewise, in the past have attacked the problem of the owner-operator through organization and education. The basic purpose in attempting to achieve organization of owner-operator was to facilitate the regulation of hours, price stabilization and improvement of fair trade practices. Membership in a trade association implied at least tacit acquiescence on the part of the owner-operator to the regulation of policies and ethical standards proposed on behalf of the trade. In the fields of retail trade, trucking, construction and commercial printing among others, definite organization of owner-operator

enterprises has proceeded for a number of years. This is especially true with regard to the small efficient enterprises. As in the case of the labor unions mentioned above, organization has followed on the theory that it is better for the industry as a whole to include the owner-operator within the framework of the voluntary organization and secure his cooperation than to minimize the effects of individualistic competitive activities by permitting him to remain on the outside.

Efficient owner-operator enterprises have aligned themselves with trade associations and labor organizations in order to participate in the benefits of voluntary organization. It has been established that small as well as large units may profit from the existence of media capable of gathering statistical information, simplifying and standardizing methods of production and distribution, eliminating waste, accelerating credit and collection activities, encouraging commercial and industrial research, making easier the joint negotiation of purchases, making possible the dissemination of valuable information, and, when proven necessary, supervising the regulation of output and operating hours.

The picture presented above with regard to the extension of cooperative organizing activities by trade associations and trade unions into the realm of the owner-operator is obviously not found in all cases. There are many cases where trade associations have shown undisguised hostility to owner-operator establishments and have carried on antagonistic activities. Paradoxically, these activities sometimes assume a contradictory aspect; i.e. they aim to force the owner-operator into trade associations or they concern themselves with his elimination from the field of competition. In the former instance the obvious procedure is to attempt to persuade reluctant owner-operators to join and abide by the rules and regulations of the association; and, if unsuccessful to adopt more effective methods such as terrorization and intimidation.(*) the second method of "stabilization" of an industry, predicted upon the elimination of owner-operators, involves such factors as boycotts, concerted pressure through restriction of credit facilities and temporary lowering of prices even below those charged by the owner-operators whose elimination is sought. Tactics of this sort result in internecine warfare among members of the trade and the smallest establishments usually lose.

In cases where owner-operator organization in trade groups has been carried out most constructively, the trades or industries have been able to establish and maintain higher labor and competitive standards, raise the level of efficiency and bring a degree of stability into the industry. Similar results have been accomplished through collective bargaining between labor organizations and employers.

Stability achieved through either of these methods of organization and control inevitably results in a degree of restriction. Whether or nor such restriction is in the public interest depends upon a delicate

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(*) It may be questioned to what extent reputable trade associations will indulge in such practices, but that it has been done is supported by the history of the cleaning and dyeing industry, laundry trade, motion picture theatre industry and others.

and difficult balance to be drawn between stability with restriction on the one hand and a degree of competitive chaos on the other.

The building trades provide numerous illustrations of attempts to control the owner operator by specific rules embodied in collective agreements. In a number of these thades such as plumbing and steamfitting, where the problem of the one-manoperator affects the legitimate contractors through the operations of the so-called "curbstone contractors" and the unions through the contracting efforts of the "self-employed journeymen," specific rules and regulations, enforced so far as possible, attempt to prevent the increase in numbers of such persons as well as to restrict their activities. In these trades, journeymen are discouraged from engaging in contracting activities, even though of a temporary nature. Journeymen are likewise restrained from entering the services of the "curbstone" contractors. An illustration of these restrictions is found in the following extract taken from a working agreement, typical of many others:

"Section 8:

> Plumbers and steamfitters shall work for none but legitimate licensed master plumbers and steamfitters with an established place of business and those approved of by the joint arbitration board herein provided for, and shall do no work for themselves, outside of their own property, and shall endeavor to have all work go through the legitimate channels of business. (*)

Journeymen are prohibited from establishing themselves as legitimate contractors without first receiving honorable withdrawal cards from their local unions. Through this method, the unions are able to maintain a check upon the number of journeymen who enter the ranks of contractors.

In the painting and paperhanging trade, where unemployment among journeymen frequently assumes significant proportions and where the line of demarcation between master and journeyman is not as strict as in the plumbing trade, the owner-operator problem is covered by agreements such as the one quoted herewith:

"Section 5:

> Journeymen Painters, Paperhangers, Decorators, etc., shall only be allowed to contract during strikes, Lockouts and unemployment. A Journeyman painter, etc., shall not be allowed to contract any job without taking out a permit for each job from the business agent." (**)

(*) Agreement between Plumbers and Steamfitters Local No. 335 and the Erie (Pa.) Sanitary Assn. May, 1925: Source - TRADE AGREEMENTS, 1925 - Bureau of Labor Statistics - Pages 53 and 54.

(**) Extract from agreement, Painters Local No. 49

The trade associations in the building industry, on their part, are constantly engaged in checking the activities of curbstone contractors with the view of enforcing state registration laws and municipal building codes, as well as seeking the employment of competent, qualified journeymen wherever possible.

Still another illustration of the joint efforts of organized labor and business to solve the owner-operator problem by voluntary agreement may be found in connection with the retail enterprises. In this field one of the most perplexing manifestations of the owner-operator problem, as previously indicated, is the "employment" of members of the proprietor's family under such conditions as to defeat the efforts of organized labor to establish definite minimum standards and conditions of employment. Frequently such individuals are classified as "managers" or partners. The following extract of an agreement represents an effort to meet this problem:

"Section 18:

> In stores where there has been a family affair of help or extra help there shall be but one employed as manager of the different departments who shall not be eligible to membership; all the rest of the parties involved in such a store shall become members of Local No. 219." (*)

The obvious purpose in a clause of this type is to designate dona fide employeed (regardless of their relationship to the proprietor) as such and therefore parties to the working conditions and standards specified in the agreement.

Other examples of trade agreements having as their fundamental purpose the regulation of owner-operators and their competing activities are cited below:

> "Retail market owners and partnerships not employing help shall join the union either as active or honorary members." (**)

> "If a boss goes into partnership, the name of the new partner is to be recorded in the hall of records. The checks and bills must carry the names of both partners and the names of partners must also appear on the window of the business. The union will not recognize such partnerships that were entered into during the time of strike. The union does not recognize a partnetship of

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(*) Agreement of Local 219, Belleville, Ill., Retail Clerks Int. Protective Association.

(**) Extract from agreement of Locals Nos. 489, 631 and 254, Amalgamated Meat Cutters and Butchers Workmen of N.A., Westchester Co., N. Y., November, 1927 - Page 101 - Trade Agreements - 1927 - B. of L. S., Dept. of Labor.

three.(*)

"If the boss himself works in the bakery he must give two days work every week to our union men." (**)

"The employer agrees not to employ any of his family, neither his wife, his son, nor any other relatives, unless he is a member of Local 209." (***)

"Neither shall any journeymen, who is a member of the party of the second part, be permitted to take piece or lump work in any shape or manner, or work for any owner or contractor who does piece or lump work, whether he be a member of the party of the first part or not.

Contracting firms having two or more members, only two of them shall use tools."(****)

"No member of Local 43 shall work for any but legitimate sheet metal contractors who have signed this agreement, are regularly engaged in business, who carry compensation for their employees, and who have a permanent place of business and the customary equipment." (*****)

"If there is more than one partner or stockholder in the firm, they shall give the name of the partner or stockholder whom they wish to perform the work above designated to the union, who (sic) shall decide whether the man in question shall be permitted to perform this work." (******)

The excerpts cited, while different in language and scope, have a

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(*) Agreement - Hebrew Butcher Workers' Union No. 234 - New York City,

(**) Agreement - Hebrew Bakers Union No. 80 Hartford, Conn.

(***) Agreement - Hebrew Bakers Union No. 209, Baltimore.

(****) Agreement of Local No. 183, United Brotherhood of Carpenters and Joiners of America, Peoria, Ill.,
Source: Trade Agreements, 1923 and 1924. B. of L. S., U. S. Department of Labor.

(*****) Agreement, Local No. 43 and 12, Sheet Metal Workers International Association and sheet Metal Contractors' Association -,

(******) Agreement - Local No. 44, Upholsterers International Union of North America -

common fundamental purpose, namely, to control the competitive activities of owner operators in the various trades and industries. This material proves that the problem was of sufficient importance to have engaged the attention of organized labor and industry for many years prior to NRA.

CHAPTER II.

THE N. R. A. PROGRAM OF CONTROL.

A. CONTROL OF WORKING HOURS AND WAGES OF OWNER OPERATORS AS A MEANS OF ATTAINING NIRA OBJECTIVES.

The attention of the National Recovery Administration was focused upon the owner operator problem in a number of industries because the attainment of the major objectives - reemployment, increase of purchasing power and elimination of unfair trade practices was interwoven with the control of the working hours and in some cases the wages of owner-operators. It was believed that the reemployment objective would be realized largely through the reduction of the employees working hours and the stimulus to business coming from a larger wage bill. However, any program designed to increase employment was compelled to cope with thousands of self employed indivisuals as well as small employers working side by side in direct competition with wage workers. Many such persons worked unreasonably long hours and obtained an income of less than code minimum wages. It was agreed by many that some restratint should be placed upon the working or operating hours of these proprietor-workers to prevent an unhealthly competitive situation, capable of nullifying the efforts of the National Industrial Recovery Act in many trades and industries.

The preceding chapter described the efforts made prior to NRA by organized workers and employers to control that group of owner operators who had contributed to the perpetuation of long hours, low wages, insanitary conditions of employment and low levels of competition. Despite these efforts, control of this element had never been achieved on a thorough or satisfactory basis. The National Industril Recovery Act with its legal sanctioning of the doctrine of cooperation in industry furnished opportunity and impetus to further efforts in this direction. Trade unions and representative business and industry groups realized the possibilities of constructive control made possible by the NIRA, and it was through these sources that the issue of control was presented to the Recovery Administration.

The control provisions with which this study concerns itself (*) are chiefly those which in one way or another were designed to limit the number of hours which owner operators were permitted to devote to manual, mechanical and other types of productive occupations and services. A few codes contained provisions governing wages of owner-operators and members of their families.

Labor's traditional policies demanded that the codes entirely restrain employers from engaging in manual, and processing occupations in direct competition with their employees. However, in approaching the problem labor representatives were necessarily required to pursue a

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(*) For detailed list of control provisions the reader is referred to listings with tabulated hours and wage provisions; (Appendix I)

somewhat flexible policy inasmuch as the need for reconciling this objective with certain practical and legal considerations was at once realized. Consequently, many codes instread of completely prohibiting employers from engaging in processing or mechanical operations merely restricted them to the maximum number of hours prescribed for workers in the industries and/or limited the number of employers in each establishment permitted to exceed the maximum number of hours in the performance of such functions.

Various industries confronted with the owner operator problem hoped that by limiting the number of employers permitted to engaged in mechanical functions and prescribing definite maximum number of hours for those allowed to perform productive services it would be possible to attain increased employment, greater purchasing power and insure protection of code minimum standards. Employers were of course primarily interested in protecting competive standards but were equally desirous with labor to secure appropriate clauses to prevent fraud and subterfuge designed to hinder the attainment of the objectives listed above. More specifically, management (*) was especially interested to secure control clauses to promote fair competition through elimination of destructive price cutting based on unreasonably low labor costs. Labor, on the other hand, had special objectives, namely, the preservation of union wage levels and conditions as well as the attainment of a potentially large membership which it was believed would result from the increased opportunities for organization and collective bargaining made possible through the general strengthening of the labor market.

B. INITIAL ATTEMPTS AT CONTROL UNDER TEMPORARY CODES.

The first attempts made by the National Recovery Administration to cope with the owner operator problem were in connection with substitutions granted specific industries in lieu of the provisions of the President's Reemployment Agreement. These substitute provisions usually were those contained in the drafts of the codes as submitted for approval. Industry groups in requesting owner operator provisions in the substitutions made it clear that they expected the proprietor-workers in their industries to comply with recognized minimum labor standards as a prerequisite to obtaining the Blue Eagle. Moreover, these initial requests for owner-operator control provisions afforded industry and business leaders desirous of cooperating with the NRA an opportunity to guage the attitude of the Recovery Administration on the subject of owner-operator regulation.

Only a few substitutions contained provisions which referred to owner operators. These were chiefly in the printing trades. The complet list of industries which requested owner-operator control provisions

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(*) Term used to describe the large percentage of business and industry which employed most of the workers and where employers usually refrained from engaging in mechanical or processing occupations.

through the medium of PRA substitutions was as follows: barber and beauty shop, lithographic, Metropolitan New York housewrecking, Non-Metropolitan publishing and printing, printing, umbrella. A tabulation of the provisions with respect to language and date of approval follows:

(1) Barber and Beauty Shop Industry
(August 10, 1933.)

"The maximum hours fixed shall not apply to persons engaged in the managerial or executive capacities, but shall apply to owners or operators of a barber or beauty shop actively working at barbering or actively engaged in beauty work."

(2) Lithographic Industry
(August 15, 1933.)

"For all employees in the industry performing mechanical operations, including any proprietors, supervisors, foremen or other executives doing such work, the maximum work week shall be forty hours and the maximum work day shall be eight days."

(3) Metropolitan New York Housewrecking Industry
(September 20, 1933.)

"No person shall be engaged in housewrecking for more than 35 hours per week, nor more than seven hours in any one day."

(4) Non-Metropolitan Publishing and Printing Industry
(August 28, 1933.)

"Publisher-printers and printers shall not employ any factory or mechanical worker or artisan, including any proprietors, members of their families *** for more than 40 hours per week in mechanical work, averaged over 4 weeks' period, provided, however, that they shall not be employed more than 48 hours in any one week."

(5) Umbrella Industry
(August 12, 1933.)

"No factory or mechanical worker or artisan may work more than the maximum 40 hours per week, nor more than eight hours per day, even though such worker may be an owner, officer or director of an owner corporation, who perfoms direct labor in the actual manufacture of products of the industry."

(6) Printing Industry
(August 2, 1933.)

"Standard working hours shall be 40 hours per week for all mechanical employees, including any proprietors

*** when doing mechanical work."

(7) Laundry Industry
(August 21, 1933.)

"The term productive labor as used herein is defined to include any employees and any owners or managers, or members of families connected with or employed by any laundry establishment and actually engaged in working on or handling articles left for washing and/or ironing."

Little information is available concerning specific events leading up to the adoption of the owner-operator clasues in the substitute provisions. The sources which sponsored these control clauses are, however, known. The Associated Master Barbers of America proposed the Barber and Beauty Shop clause; the Laundry Owners' National Association presented the clause for the laundry trade; the National Association of Lithographers sponsored the provision for the Lithographic Industry; the National Editorial Association proposed the clause for the Non-Metropolitan Publishing and Printing Industry and the United Typothatae of America was responsible for the provision affecting the printing industry.

In considering the clauses adopted for the various branches of the graphic arts industries, it is pertinent to note that the printing trades unions were opposed to the control devices as proposed by the trade associations and unsuccessfully attempted to secure amendments. The printing trades unions insisted that the level of competition between owner-operator printing shops and establishments giving employment to labor could best be raised and the stabilization of labor conditions facilitated through adoption of control clauses designed to establish opening and closing hours limiting shop operations to the maximum number of working hours allowed for mechanical workers other than owner-operators. The various branches of the printing industry were finally codified under one master Graphic Arts Industries Code, (No. 287, Volume 7) with a number of industry divisions. In the approved Code the limitation of 40 hours per week was applied to owner operators in the commercial printing branches, (with the exception of the lithographic industry), for the time actually engaged in mechanical occupations. In the lithographic division the control clause limited all persons engaged to any degree in mechanical operations to the maximum work day or work week.

C. REGULATION THROUGH PROVISIONS IN CODES OF FAIR COMPETITION

Among the divisions of industry, business and trade which were codified approximately 105 included in their respective codes clauses designed to limit the opportunities of owner operators to engage in practices alleged by Labor and Industry groups as detrimental to the progress of the recovery program. These clauses were proposed by a numoer of different groups and frequently were subjected to considerable modification prior to adoption. In industries where labor and employers were organized to a high degree prior to the Recovery Act, as in the case of the garment, fur and building construction trades the control provisions were submitted usually as the result of joint deliberation, although in such instances it sometimes happened that while employers and workers agreed as to the necessity of control devices, they differed in their conceptions of the language or scope of the proposed provisions. (*)

The NRA Labor Advisory Board and staff played important roles in the negotiations for control provisions. The influence of the Board was especially potent in industries where workers were poorly organized for in such cases it devolved upon representatives of the Board to scrutinize owner operator control provisions submitted by trade associations and decide whether the language and scope of the proposed clauses were in the best interests of workers.

Occasionally, prominent trade union officials acting as representatives of the Labor Advisory Board, proposed control clauses. An example of this may be found in the plastering industry code hearing where Michael J. Calloran, President of the Operative Plasterers International Association

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(*) An excellent illustration is offered in the case of the Pleating, Stitching and Bonnaz Embroidery Industry. Here, notwithstanding the existence of collective bargaining relations between employers and employees in the industry and the common conviction that control of employers' working hours (operation of machines) was essential, dispute prevailed at the NRA Code hearings for this industry as to the scope of the proposed clause. The union wished to eliminate all employers from operation of machines whereas the most important group of organized employers proposed that in each establishment having more than one employer all but one be eliminated and that this one's hours for personal machine operations be limited to those of the workers in the industry. The employers stressed their plan as a means of reconciling divergent viewpoints among extreme elements but the union replied that it would be difficult to police the activities of any employer permitted to engage in productive functions and that the limitations proposed by the employers would not prevent subterfuge nor provide for the maximum reemployment possibilities.

Volume 1. Transcript of hearing, Pleating, Stitching and Bonnaz Embroidery Industry, Pages 68-164. (Code No. 276, Volume 6)

of the United States and Canada proposed that employers who personally performed manual work or were engaged in mechanical operations be regulated by the same maximum hours that were provided in the code for the plastering industry to regulate employees.

D. SPECIFIC PROBLEMS OF CONTROL

Specific instances of some of the owner-operator problems discussed in Chapter I were cited to WPA by labor organization representatives and industry groups to support requests for control provisions to regulate owner-operators. Reference to these alleged difficulties helps to explain the scope of the proposed clauses as well as the reasons for their adoption.

Some of the problems cited were localized in particular industries; others crossed industry border lines and were reported equally troublesome in various fields of enterprise.

The major difficulties for which control clauses were requested may be classified as follows:

1. The fluctuating contractor-journeyman
2. Multiplicity of working partners in small enterprises.
3. Subterfuge through (a) cooperative enterprise corporations and (b) family corporations.
4. Effect of working proprietors upon peak and slack periods.
5. Need for special regulations for starting and finishing periods of work.
6. Wages and other compensation for owner operators and/or members of their families.

1. The Fluctuating Contractor Journeyman.

The problem of distinguishing contractors from journeymen was, as the title indicates, chiefly a concern of the building and construction industry. Branches of this industry in which both workers and employers were highly organized had endeavored prior to NRA to establish rules and regulations through collective bargaining agreements for the purpose of clarifying the status of persons connected with the industry.(*) However, because of the inherent nature of the industry, the determination of status or separation of functions of individuals associated with the industry has never been satisfactorily achieved. In some branches of the industry it was impossible to circumscribe the jurisdictional area of occasional employers, self-employed journeymen and regular workers. Consequently, when the NRA was enacted, organized employers and workers

(*) Chapter I

agreed to follow what seemed to be the only course possible under the circumstances and propose devised designed to limit the number of maximum hours of all "employers who personally perform manual work or are engaged in mechanical operations" to the same maximum number of hours provided in the codes to regulate the employees.

The problem of regulating the hours of the fluctuating contractor-journeyman was succintly explained to the NRA by a representative of one of the construction industry branches (*) in support of a proposal for a control provision. He made the following statement:

> "In section 5 we have tried to deal with a most trying situation, that of the man who is jumping back and forth from the ranks of the journeyman to the ranks of the contractor, as best suits his convenience. He is an unfair competitor both to the journeyman and to the contractor because he seldom, if ever, figures his costs correctly or observes the customary hours of labor, or changes those for whom he takes contracts sufficient to pay himself the going rate in the territory in which he is operating. This section is introduced with the hope that through this means this man can be made into a better competitor for either the journeyman or the contractor."

Among the prominent branches of the construction industry where the fluctuating contractor proved especially troublesome were the painting, paperhanging and tilesetting trades. On the other hand, industries such as plumbing and electrical contracting, which were highly regulated through state and municipal licensing laws, were not as greatly troubled with this particular problem .

2. Multiplicity of Working-Partners in Small Enterprises

The existence of many shops, stores and factories with a large number of co-proprietors was another important contributing factor in the demand for control provisions. This problem which especially affected the garment and fur industries in metropolitan areas, included in its ramifications the related problems of sub-letting of premises, sub-contracting and homework. This phase of the inquiry, however, concerns itself primarily with the relationship between establishments with a multiplicity of partners and the need for code control provisions. In many small shops and factories in the metropolitan garment and fur centers the personnel consisted of three, four, five or more partners and a like number of employed workers. The degree to which these partners followed manual and processing occupations such as operating embroidery machines varied with seasonal demands and fluctuations within the particular industries. During peak periods when the demand for workers increased the partnership problem was not considered as serious as during slack periods.

(*) Statement of L. Williams, representative of the Heating, Piping and Air Conditioning Contractors' National Association, at hearing on proposed code of that industry, September 11, 1933. Transcript of Hearing, Construction Industry, Volume 9, pp.56-57.

Many partners under favorable business conditions, devoted more time to the management and sales ends of the undertaking and less to operating machines. However, when business suffered either as the result of seasonal and style factors or generally depressed conditions, the tendency for proprietor-partners to discharge workers and operate the machines themselves was very pronounced. (*) This situation had existed for many years prior to NRA.

In the early days of NRA the trade unions in the garment and allied industries approached the partnership problem with the hope of obtaining clauses to eliminate all owners and proprietors from manual operations. This approach was based on the traditional labor theory that a complete distinction should be made between proprietors and other bona-fide members of the industry on the one hand, irrespective of the number in each establishment, and the workers employed by them on the other. Because of the high degree of union organization in many of these industries it was possible to obtain strong support to such proposals. It is particularly significant that the larger shops where this type of partnership problem did not manifest itself and where owners were interested in preventing destructive price cutting based on unreasonably low labor costs, supported the unions' proposals, whereas, some of the medium-sized and most of the smaller establishments (which abounded in great numbers) where proprietors believed they would be directly affected by the adoption of such proposals, vigorously objected to them, and frequently challenged their legality. The result was a series of compromise clauses which in affect either limited the hours of all owner-partners in each establishment while engaged in productive functions to the maximum number of hours prescribed for the workers under the particular codes and/or limited all members of a partnership but one to such hours.

Important examples of industries where these devices were debated at code hearings were canvas goods industry (Code No. 333 - Volume 8), Schiffili and Hand Machine Embroidery Industry (Code No. 256 - Volume 6), Pleating, Stitching and Bonnaz and Hand Embroidery (Code No. 276 - Volume 6), Art Needlework Association (Code 335 - Volume 8) and Fur Manufacturing (Code No. 436 - Volume 10).

Canvas Goods Industry and Wholesale Canvas Goods Mfg. Industry.

The industry proposed that "with the exception of one individual per member of the industry, all members of any individual proprietorship, partnership(**) if engaged in any process of direct manufacture of the products of the industry, shall be bound by the above schedules of hours of work and pay, regardless of such proprietory interest."

The industry spodesman, Richard R. Foster, Chairman of the Board of the National Tent and Awning Manufacturing Association and Chairman of the Code Committee, in his testimony submitted the following reason and data in support of the proposal:

(*) For examples of particular industries see testimony cited Chap. II.

(**) Article V, Section 5, Code for Canvas Goods Industry.

"As previously stated, the Bureau of Census figures for 1929 show that there are 1,002 establishments. Our estimates are in accord, but there are a large number of individual family establishments that are engaged in this industry in their homes, etc. Section5 of Article V provides that with the exception of one individual per member of the Industry, all members of any individual proprietorship, partnership* * * * although connected with such member as co-owner, partner * * * *, if engaged in any process of direct manufacture of the products of the industry, shall be bound by the above schedules of hours of work and pay, regardless of such proprietary interest. This provision, we submit, is essential to effectuate the policies of the National Recovery Administration in spreading employment and is also desirable from the viewpoint of the consumer in that many of the products of the Industry are manufactured under conditions which are unsanitary and without inspection supervision of the proper governmental agencies."(*)

Apropos the proposal to exempt one member of the industry or partnership from the hours limitation provision, Israel Convisser a representative of the Greater New York Awning Men's Association, a subsidiary of the National Association, stated:

"With respect to Article V, Section 5 of the code proposed by the National Tent Makers Association, we except to paragraph 5 as it appears, and propose in its place the following:

> "all members of any individual proprietorship, partnership*** although connected with such member as co-owner, partner**if engaged in any process of direct manufacturing of the products of the industry shall be bound by the above schedules of hours of work and pay, regardless of such proprietory interest."

It will be noted that this provision differs from the one proposed by the National Association in the one respect that we would have it include all members of any firm, without excepting any individual. We feel particularly in our experience there are any number of individual employers who are unlimited as to hours of labor, putting in as much as 16 hours of work a day when necessary, who do not charge themselves with the work that they do, who feel that their labor is gratis, and they are therefore able to undersell their more legitimate competitor. On the same point we suggest

(*) Transcript of Hearing, Canvas Goods Industry and Wholesale Canvas Goods Manufacturing Industry, Volume 1, Page 34, Nov. 28, 1933.

> that the cost of any work done, either in the process of direct manufacturing or in selling, whether performed by any of the herein above mentioned members, or by anyone else, and whether or not actually paid for, shall be included in the computation of the cost of production.
>
> We feel that if the employer is bound to base his cost of production upon whatever labor is done, whether the wages are actually paid or not, the rest of the industry will be in a better position to meet the competition offered."

The Upholsterers, Carpet and Linoleum Mechanics International Union of North America, on behalf of the workers, favored the elimination of all industry members as productive workers. This viewpoint was advanced by Louis Waldman, on behalf of the labor organization stated:

> "We also wholeheartedly support Section 5 of Article V * * * And we feel that perhaps the elimination of even one individual in such a small unit of production as being exempt from the hours and wages may be a very wholesome way of maintaining and developing standards in this industry."

Art Needlework Association

At the code hearing for the art needlework industry, this problem also arose. In reply to a question propounded by the legal advisor as to the necessity for a control clause the union representative, Mr. Weiss, stated:

> "***I am not thinking of hours so much from the standpoint of unfair competiton, to the members of the industry, but I am thinking of it from the standpoint of unfair competition so far as labor is concerned. You take a small company which may be owned in whole or in part by three people, all of three of whom are skilled operators, all three of whom can perform most of the functions performed in a small plant. Now, if there is no restriction on their hours, they can work 50, 60, 70, 80 hours a week, and can turn out all the work that is required by the business in hand, without employing the help which they would be compelled to employ if their number or working hours were restricted. In other words, they operate as employees more than in a managerial capacity. If they were compelled, in so far as their factory operations are concerned, to work 40 hours a week, to work

according to an hourly schedule, they would be compelled to put on one or two, or three or four employees." (*)

(*) Transcript of Hearing, Art Needlework Association. Volume 1, Page 76.

Fur Manufacturing Industry

The fur manufacturing industry offers still another illustration and gives further evidence of the fact that the problem was of common concern to management and labor. Mr. N. Rompapa, on behalf of the United Fur Manufacturers' Association, in support of a proposal to apply the maximum number of hours prescribed for the industry for all employers and all members of the industry insofar as they themselves performed the work of craftsmen, testified as follows:

> "As there is a possibility of unfair competition to fur manufacturers, and especially to fur plate makers, to the effect that members of the industry may come together under the guise of partnerships and perform the work of craftsmen themselves without the employment of labor and thus be exempt from this Section 8 of Article III, since they will not be employers, said Section 8 of Article III should be modified so as to include all employers and members of the industry."(*)

It is pertinent to note that in this industry, as in the case of some others, disagreement prevailed between the union and management representatives as to the scope of the proposed control provision. Whereas the employers' group wished to limit only the hours of members as the industry and in this manner control owner-operators functioning as partners, the International Fur Workers Union proposed that in the case of firms consisting of more than one partner, only one should be permitted to work.

The examples cited as well as the general trend of testimony submitted in connection with other industries indicate that in attempting to apply owner operator maximum hour control devices to partnerships, three primary purposes existed: (1) to prevent destructive price-cutting based on unfair, low labor costs; (2) to discourage the development of fictitious family partnership relations formed to evade code provisions; (3) to provide reemployment in establishments operating on a legitimate partnership basis.

3-a Subterfuge through cooperative job enterprises

Closely allied to the partnership problem and perhaps of more serious consequence to the workers affected was the problem of owner-operator cooperative formed for the purpose of defeating the Recovery Act. The added seriousness arose because this practice more directly touched workers than the ordinary fraudulent partnership schemes, inasmuch as workers frequently were made unwilling parties to the so-called cooperative job plans.

The cooperative shop or job projects followed different courses and employed various methods, dependent upon the nature and type of the particular industries. In the construction field the usual practice followed the form of issuing worthless shares of so-called stock to bona-fide mechanics, thereby classifying them as part owners in the enterprise and, in the absence of code control provisions, immunizing them from all labor standards and requirements. This situation was explained by Mr. Harry C.

(*) Transcript of Hearing, Fur Mfg. Industry, Volume 1, page 81

Bates, a vice president of the Bricklayers, Masons and Plasterers Union of America, at the hearing for the Code for the Terrazo and Mosaic Industry (Code No. 244 Volume #131. His testimony included the following statement:

> "As a representative of the Bricklayers, Masons and Plasterers International Union, in which the terrazo workers have membership, I might say that the statement made by Mr. Furman as to the need of stamping out co-operative jobs in the industry is well known. He covered that to an extent that is satisfactory to us. At this time and previously there have been certain so-called contractors who would have eight or ten mechanics in their shops and those mechanics would own one or two shares of so-called stock in the shop and all of these contractors would work at the shop, both as a machine operator and as a contractor, making it absolutely impossible for the bona-fide contractors to compete with a job of that kind. They would go out and estimate a job and pay wages far below that enjoyed in the industry and after the job was completed and in a very short time these same men who were promised bonuses would be freezing out many bona-fide contractors, by control of the majority of the stock which would remain under their trade name, and operate with another group of workmen, and secure an additional contract.
>
> This clause, of course, would stamp out that practice, which would be of interest to all parties concerned in the industry. It is in the interest of workmanship to prevent chiseling contractors from going out at this time to secure contracts in this way to work terazzo workers and helpers at a wage scale far below that enjoyed by those organizations connected with the industry. (*)

An additional instance of the cooperative plan designed to nullify the purposes of the Recovery Act in this particular sphere was cited by Mr. Norman L. Marks who testified at the Code hearing for the Salvage and Wrecking Industry. (Codes of Fair Competition as approved U. S. Government Printing Office, Volume VII, page 459) This industry proposed that "any employer who performs the work of an employee shall be deemed an employee," and in support of this proposal, the proponent's representative stated:

> "In that connection may I add that the purpose of the clause is because of the fact that throughout the country we have found that in a great many wrecking and salvage jobs, in a great many of the yards, in order to defeat this, the purpose of the Act, there has been cooperative bidding and cooperative work. In other words, a man who is an employer takes in ten or twelve of his employees for a particular job as partners, and then claims that they are all employers of labor, and not bound neither by the maximum hours, nor minimum wage. We intend to prohibit the so-called cooperative work for the purpose of defeating the Act. We propose that clause as a means of defeating it. (**)

(*) Transcript of Hearing, Terrazo and Mosaic Industry (Branch of Construction, Vol. 1, Pages 38,39. The Mr. Fuhrman referred to was a spokesman of the Industry.

(**) Transcript of Hearing, Salvage and Wrecking Industry, Vol. 1, Page 85.

The garment industries likewise were troubled with the owner-operator cooperative shop problem. At the hearing on the Code for the Pleating, Stitching and Bonnaz Industry acrimonious dispute prevailed in connection with proposed clauses to limit the hours of working employers and to eliminate the practice of subletting portions of garment lofts together with machines to workers on a fictitious partnership or cooperative basis. Both clauses were definitely interwoven and the testimony with reference thereto; both pro and con, dealt with the basic conditions in the industry. The union representatives were not opposed to legitimate sub-letting of premises to bona fide manufacturers in cases where manufacturers operating on a small basis, found it difficult to maintain entire lofts, but proposed the restrictive measure as a means of preventing the development of fraudulent cooperative enterprises. The following extract from the testimony of Mr. Silverman, a member of the industry, in support of the proposed control clauses portrays the nature of the difficulty experienced by portions of the industry as well as labor to cope with the borderline enterprises against which the clauses were proposed:

> "Dr. Freidman (an owner-operator group representative M.R.) wants absolute freedom for all bosses to work, no matter whether there are three or four; and he does not want the clause that only one shall be permitted to work. So far as subletting in the shop is concerned, this is a different and greater evil than that which would permit the boss to work at the machine. They conceived the idea that there are four or five crafts in a shop, and there are tuckers and stitchers, pleaters and embroiderers. (And there are really more than five.) And one man would conceive an idea: Instead of employing workers they would assign one part of the work to a man and say, 'you are the boss over this', and to a man on the hemstitcher end he would say: 'you are the boss of hemstitching,' and to the embroiderer, 'you are the boss of the embroideries.' He claimed they were partners or individual manufacturers. And, if necessary, they would render individual bills.****They would depend upon their own labor, and they would put in as many bosses and as many hours as possible. A shop of 18 machines could have five different bosses or five different employes." (*)

During the hearing on the Code for the Fur Dressing and Fur Dyeing Industry (Code of Fair Competition as approved, U. S. Government Printing Office, Vol. IV, Page 161,) the cooperative shop problem caused considerable discussion. The attempt to frame appropriate phraseology resulted in a maze of confusing language and the development of a considerable difference of opinion as to legality and scope of the contemplated clauses. The International Fur Workers Union's representative, Mr. Markewich, stated at the end of a prolonged discussion during which various types of cooperative shops in the industry and their effects upon labor standards and employment conditions were analyzed:

(*) Transcript of Hearing, Pleating, Stitching and Bonnaz Embroidery Industry, Volume 1. Page 97.

"If you take as a model the Cloak Code and the Fur Manufacturers' Code and try to work in the same language into this Code by saying that those who are interested in a cooperative factory or a cooperation should work the same hours as all other workers in the industry, and if you are going to do what they did in the other codes, establishing, as you say, Mr. Adviser, a reasonable minimum wage scale in addition to it, you are going to remove any possible incentive for them to organize shops and work as they have been doing, because the only way they can operate those shops is under a sweat-shop basis working long hours and dividing whatever little pay there is. That is the only way that that can be done, I think, legally and practically." (*)

Another representative of the Union, Mr. Schlessinger, pointed out the direct connection between the cooperative shop and the reemployment objective. He referred to the fact that this particular industry had about 3,000 unemployed, and that although 2,000 of these might be reemployed as a result of the Code, the remaining 1,000 not finding work might be forced to operate as cooperative enterprises and would be in a position to underbid the labor market.

3-b Subterfuge Through Family Corporations

The use of corporate devices to defeat NRA was emphasized by labor spokesmen at a number of industry code hearings such as Baking, Schiffle and Hand Machine Embroidery, Fur Dressing and Retail Trade. Here the problem consisted of the "employment" of stockholders in corporations, most of which were family affairs. The need for limiting hours in many small establishments which utilized the services of members of the family arose from the fact that most of these enterprises were small and their competitive status was closely related with the number of hours which they operated and the number of hours which workers were employed. Under such circumstances extraordinarily strong pressure existed for opportunities to use the services of persons without restriction as to hours. This was attempted by the simple device of incorporating the business and issuing shares of stock to the members of the family or others associated with the establishments who then, in the absence of code control provisions, would be eligible to work unlimited hours.

Labor organizations in a number of the industries affected attempted to cope with this problem by securing clauses in or amendments to the codes to govern the employment of stockholders and relatives.

A typical reference to this problem may be found in the statement of a leading labor representative who urged added protection to the workers in the bakery industry. Charles F. Holmann, representing the Bakery and Confectionery Workers International Union of America, testifying on behalf of a proposed amendment to guard workers against the stockholders problem, testified as follows:

(*) Transcript of Hearing Fur Dressing and Fur Dyeing Industry, Code No. 161, Transcript Vol. No. 1, p. 155.

"Before we pass from the subject of the work week we should like to speak for a moment of one or two other matters having relation to it because they have relation to employment. We have proposed amendments to a section having to do with the employment of stockholders and relatives. Unless our amendment is accepted it will be possible for many shops to employ stockholders and relatives to the extent of one-fifth of their working force or to a majority of their inside force in the case of a small shop and thus to exempt them from the provisions of the code as to hours and wages. We urge that no such blow be struck at reemployment and new purchasing power. " (*)

Despite the technical differences involved in the formation of fictitious partnerships, owner-operator cooperatives and family corporations, and notwithstanding the various methods employed by these devices, their common purpose, as described by the proponents of control devices was the attempt through open subterfuge or legal technicalities to avoid compliance with labor provisions and in some instances fair trade practices of the codes. Although the code control provisions adopted to guard against these types of subterfuge varied in phraseology, in effect they all provided that members of industry, or owners, partners, officers or stockholders who worked as productive employees should be subject to the hour provisions of the code. A number of codes qualified the control provisions by exempting one partner, stockholder, etc., from the effects of the provisions. These qualifications resulted, as previously pointed out, from the necessity of compromising conflicting views and in order to eliminate unjue hardship to some bona-fide partnerships, small corporations, where the exigencies of the situation demanded that a more flexible policy be adopted.

4. Effect of Working Proprietors Upon Peak and Slack Period

Although the nominal purpose of many owner operator hours control provisions was the prevention of fraud and subterfuge, their primary object was to expedite reemployment through curtailment of hours. In the trades and industries where proprietors competed with employees for the available work, it was deemed necessary to create conditions favorable for the absorption of the maximum number of unemployed. To accomplish this and at the same time to avoid undue hardship to employers in small units was a problem faced by labor and business leaders. The trade union viewpoint on the subject of employers competing with workers for available work has been previously indicated. It consisted of the conviction that the responsibilities and functions of the employer differed from those of workers and that the former should not, when conditions favored it, deprive the latter of employment anymore than that workers should usurp the entrepreneural rights of employers by engaging in marginal one-man or cooperative enterprises.

It has been previously pointed out that this doctrine or policy on a number of occasions resulted in a demand that employers and members of the industries generally defined as proprietors or owners refrain from engaging in mechanical or processing occupations. This demand was emphasized in the garment trades which periodically faced the problem of seasonal unemployment due to peak periods. It was a matter of general knowledge, at least

(*) Transcript of Hearing, Baking Industry, Jan. 30, 1934, Vol. 1, p.177.

to those concerned with efforts to regularize and stabilize employment in the garment industries that during peak periods workers operated under considerable physical stress, with unlimited overtime a common practice. As these periods ended, hundreds of workers were immediately discharged and their places at the machines occupied by proprietor members of the industry. Trade union leaders expressed the hope that the NIRA through code control provisions would drastically limit the number of owners and employers who worked at machines and thereby contribute to the elimination of peak period evils.

This problem was raised at a number of Code hearings. For example, at the hearing on the Code for the Pleating, Stitching and Bonnaz Embroidery Industry trade union representatives pointed out that in the City of New York alone approximately 600 shops had from one to seven employers each. On an average, during peak periods, two employers in each shop constantly operated machines. Union leaders submitted data to support requests for rigid control devices. These data showed that in this one area 1,200 owner-operators with unlimited working hours prevented an appreciable number of workers from obtaining positions. They also pointed to the practical difficulties involved in attempting to police the activities of employers permitted to work at machines during prescribed periods and asserted as a conclusion that the only way by which NRA control of owner-operators would materially contribute to reemployment was through complete elimination of employers and owners from productive functions.

5. Need for special regulations for starting and finishing periods of work.

A number of industries, in addition to facing the problem of securing code definitions of owner-operators and incorporating maximum hours clauses to regulate the productive services of such persons, were confronted with the special problem of limiting shop hours by providing definite starting and finishing hours regulation for all workers engaged in mechanical or processing activities.

These additional regulations were deemed necessary because the preponderance of owner-operators in proportion to the number of wage earners in some industries resulted in the fear that the ordinary maximum hours control provisions would not be sufficient to prevent owner-operators from working unlimited hours. Another reason was the belief that the adoption of special clauses to apply either on a national scale or through flexible sectional or local determination would prove necessary to govern procedure relative to opening and closing hours per day or shutdown periods per week. Here, as in cases previously discussed, there existed a definite relationship between the projection of control clauses and the anticipated stabilization of hours in the interest of fair cimpetition, wage stabilization and reemployment.

The industries which requested the special limitation of hours clauses were found chiefly among the service, apparel, textile and manufacturing fields. (*)

Representative examples may be cited in the following Codes of Fair Competition as approved, U. S. Government Printing Office, volumes and pages as shown:

Millinery	Volume	No. 4	Page	1
Dental Laboratory	"	" 5	"	283
Laundry Trade	"	" 6	"	487
Barber Shop	"	" 9	"	331
Merchant & Custom Tailoring	"	" 14		47
Textile Print Roller Engraving	"	" 7	"	539
Schiffli and Hand Machine Embroiedry	"	" 6	"	133

A number of specific problems contributed to the proposal of the special clauses and these will be briefly discussed.

1. Hours Identical with Employee Maximum Hours

In some industries it was necessary to establish opening and closing hours of shops and establishments identical with employee maximum hours. This was due to the existence of union agreements with employers which restricted the hours of work to definite periods as between 9:00 and 5:00 and/or to five days per week, and the fear that unless such labor provisions were incorporated into the codes, a minority of cooperative shops or partnership establishments would be able to exercise unfair advantage. Another reason was that labor, in industries which prior to

(*) For complete list of industries with special control clauses see listing of hours provisions (Appendix I)

NRA had not obtained agreements with hours provisions of this type, hoped that by stabilization of hours through NRA control machinery the basis for permanent collective agreements would be laid. A typically standard clause designed to provide definite starting and finishing hours of work for all persons connected with the mechanical and processing activities of the industry is found in that proposed on behalf of the pleating, stitiching and bonnaz hand embroidery industry (codes of fair competition as approved, W. S. Government Printing Office, Volume 6, Page 409, Art. 3):

> "Section 1: A normal workday shall not exceed seven hours; the hours of work shall be 8:45 A. M. to 4:45 P. M. with one hour for lunch. Section 3: No employee shall be permitted to work more than five days in any seven day period, commencing on Monday of each week and ending on Friday. Section 5: Any employer who does the work of an employee shall be subject to the provisions of this Code as to hours of labor."

It will be noted that this clause incorporated three distinct principles of limitation; (1) the daily hours limitation, (2) the five-day week and (3) the restriction of working employers to the hours per day and days per week assigned to employees generally. Through the integration of these three sections an effective regulatory provision was obtained and processing hours synchronized with employees maximum hours. A clause of this type was possible of administration only in cases where strong organized labor pressure manifested itself.

In some industries proposals to incorporate the principle of starting and finishing regulations were coupled with desire to avoid the rigidity evident in the type of clause quoted above. These industries proposed clauses which contained definite starting and finishing hours, generally based on union agreements, but which permitted modifications necessary on the basis of local conditions and needs. The special opening and closing hours clause adopted by the schiffilie and hand embroidery industry (codes of fair competition as approved, U. S. Government Printing Office, Volume 6, Page 142, Article 4, Section -1-a) is typical of this group:

> "A normal work day shall not exceed eight hours; the hours of work shall be from 8:a.m. to 12 o'clock noon, and from 1:00 P. M. to 5:00 P. M. from Monday to Friday inclusive, except that the Code Authority subject to the approval of the Administrator may, upon proper showing, allow sectional members of the industries to operate at other hours than the daily standard hours herein provided."

Another step in the direction of flexibility was evidenced by the proposal of clauses giving the code authorities power to designate opening and closing hours determined by local conditions. This is illustrated by the clause adopted in the ladies handbag industry, (codes of fair competition as approved, U. S. Government Printing Office No. 332, Volume No. 8, Page 30, Article 3); Section 4:

> "Subject to the approval of the Administrator, the Code Authority

shall designate the hours before which work shall not begin and the hours after which work shall not continue. In the discretion of the Code Authority such opening and closing hours need not be uniform throughout thecountry but may be varied to meet varying needs and conditions."

Closing Special Day Problem

A number of industries wished to secure control provisions to cover the closing of establishments during certain days of the week. The most frequent manifestation of this problem occured in connection with attempts to translate into code control provisions the principle of the five-day work week. In most cases trade unions were responsible for the presentation of clauses to safeguard or effectuate this principle. The language most frequently employed to define this objective read as follows:

"No employee shall be permitted to work more than five days in any seven day period commencing on Monday of each week and ending on Friday."

Among the industries for which clauses of this type were proposed were:

Schiffili & Hand Machine Embroidery	(Code No. 256 Volume No. 6 - P. 133
Pleating, Stitching & Bonnaz	(Code No. 276 Volume No. 6 - P. 403
(*) Cap & Cloth Hat	(Code No. 457 Volume No. 11 - P. 193
(*) Celluloid Button, Buckle & Novelty Mfg.	(Code No. 400 Volume No. 9 - P 367

(Codes governing these industries found in U. S. Government Printing Office Publications, volumes and pages as indicated)

(*)

(*) Permitted work to be performed on Saturday of week in which a legal or religious holiday occurred during normal work week.

The Saturday closing provisions showed the same range of flexibility that characterized the daily opening andclosing hours provisions referred to above. In some industries provision was made for a straight five day week whereas in others (cap and cloth hat) code authorities were given power to effect the necessary variations based on local requirements.

A different sort of special closing day problem was presented by the dental laboratory industry where a control provision was submitted requiring all laboratories to close Saturday afternoon and Sunday. The complete control provision read as follows:

"No dental laboratory shall be operated or remain open in excess of fifty-two hours in any one week;nor shall any such laboratory be operated or open for the purpose of performing any business function on Sunday or before 7 A. M. on any week day, or later than

1:30 P. M. on Saturday. Uniform holiday closing hours between the hours herein prescribed may be established in any metropolitan area, city, or town, by a majority vote of all labratories located within such areas and when approved by the Code Authority shall be binding upon all laboratories in such area."

Representatives of this industry testified at the Code hearing that many owner-operator laboratories were inflicting intolerable standards of competition on the stabilized elements of the industry through long hours, Sunday work and price cutting. The adoption of the above clause was vehemently protested by owner-operators who finally received a concession in being permitted to engage in productive duties four hours in excess of the standard forty hour week established for workers in the industry.

The laundry industry presented still another variation of the special closing day problem. The control provision adopted, in addition to prohibiting opening of laundries for production of service between the hours of 10 P. M. and 6 A. M. and receiving and delivery work between the hours of 8 ;. m. and 5 a. m., applied the limitation in both instances to Sunday. Here, the purpose, as explained by representatives of the industry was to strike at the competition of Chinese family hand laundries which operated during all hours of the night and Sunday. The testimony of Mr. A. Cronenberg, representing the Brooklyn Hand Laundrymen Association, is in point. He stated:

"The Chinese runs his store, usually opening about six o'clock in the morning and operating until about one a. m., the following morning, and employing no outside labor in his store. If there are any variations of hand laundries, whether they are two or three Chinamen working they always report that they are partners, and, therefore, do not have to pay each other any salaries or wages. That competition, that Chinese competition in the matter of hours, is something that I believe the Administrator should take into consideration." (*)

In evaluating the worth and scope of these special clauses to govern opening and closing hours or to designate special clolsing days it is well to remember that in practically all cases such clauses were definitely coupled with provisions which limited the hours of owner operators while engaged in mechanical or processing activities. Consequently, even though the special clauses relating to starting and finishing of work applied to all workers governed by the particular codes, any special significance which attaches to these clauses is the result of their relationship to the operating hours of proprietor-workers, and the consequent application of enforcement efforts and methods in this field.

6. Wages and Other Compensation for Owner Operators and Members of their Families.

(*) Transcript: Laundry Trade Volume 1, Page 199.

A number of industries in addition to the hours control clauses attempted to regulate the owner operator problem through the application of minimum wage provisions. This was attempted despite the recognition that owner operators could not be compelled to pay themselves the minimum wages, but because of selling below cost prohibitions established by the codes. These prohibitions required the computation of labor and other costs to determine the minimum selling of prices. By requiring owner operators to include themselves and /or members of their families as paid employees in computing labor costs, it was hoped that the price cutting due to sales below costs resulting from incomplete computations of consts would be minimized.

Only a handful of specifically included wage control provisions in which owner operators were directly mentioned. (*) However, opportunites for the exercise of owner-operator wage control were present in many industries. This was due to the fact that many codes defined employees interms broad enough to include owner operators while engaged in mechanical or processing occupations and included as well prohibition against selling below costs. Thus, in the event an owner operator was suspected of selling below costs as the result of failure to include charges for his own labor and /or, the labor of members of his family, as required by the particular code, and code violation proceedings were instituted, the burden of proof clearly rested with the accused to show that he had made due allowance for such labor costs.

(*) See tabulated listing - Appendix I

E. TABULATION OF N. R. A. CODE PROVISIONS AFFECTING OWNER OPERATORS

The hours and wage control clauses contained in the approved codes of fair competition are listed on the Hours and Wages Tabulations respectively (Appendix Q)

1. Hours Tabulations

This listing links the hours control clauses with 105 codes (including several code industry subdivisions). These clasues are tabulated under titles which indicate the purpose for which the clauses were adopted. Because of the broad phraseology of many of the provisions a considerable amount of overlap in the classifications, is inevitable.

The tabulation shows the following:

Under title A "Provisions controlling owner operators actual working hours as workers" two sub-titles are indicated; the first, entitled "Employers doing work of employees are subject to code control provisions as to hours of Labor" covers 25 codes; the second entitled "Employers performing manual work or engaged in mechanical operations may not exceed employees maximum hours" applies to 45 codes.

Title B refers to provisions for starting and finishing periods of work. Under this title

11 codes contain provision which establish limitations on employees' working time, either with respect to starting and finishing hours of work and/or the number of days per week;

8 codes have clauses which name specific days in the week on which employees were prohibited from working;

12 codes empower code authorities to establish starting and finishing hours and/or/provide for closing on certain days in the week.

Title C is entitled "Provisions designed to prevent suberfuge." Under this title, a number of groups including officers, all members of a partnership, all members of a partnership but one, stockholders, members of cooperative, members of the industry, owners and families of owners are declared by control clauses to be subject to maximum

code hours while at work as productive employees. A breakdown of these groups on the basis of codes shows the following:

13 codes restrict officers to maximum code hours.
26 codes restrict all members of a partnership.
4 codes restrict all members of a partnership but one.
14 codes restrict stockholders.
3 codes restrict members of cooperatives.
15 codes restrict members of the industry.
14 codes restrict owners
15 codes restrict families of owners.(*)

N.R.A. CODE PROVISIONS RELATING TO WAGES OR OTHER COMPENSATION FOR OWNER OPERATORS AND MEMBERS OF THEIR FAMILIES.

Eighteen codes contain provisions relating to wages or other compensation for owner operators and/or members of their families. As in the case of the hours control clauses some degree of overlap is present in a number of wage clauses.

A tabulation of these clauses shows a breakdown into five groups, viz;

4 codes contain clauses which state that employers and members of the industry who do work of employees are subject to code wage provisions;

5 codes provide that relatives or members of employers families doing the work of employes are subject to code wage provisions;

5 codes state that relatives other than husband or wife, while doing work of employees are subject to code wage provisions;

6 codes provide that working partners, stockholders and others having proprietory interest are bound by code wage provisions;

2 codes contain clauses to the effect that wages of members of industry who perform work of employees shall be included in the cost accounting.

(*) Owner operators included as employees by code definitions.

F. FACTORS IN DEVELOPMENT OF NRA POLICY ON SUBJECT OF OWNER OPERATOR CONTROL.

Even a cursory perusal of the transcripts of testimony covering code hearings at which the owner operator problem was discussed is sufficient to establish the fact that during the greater part of the code making period the National Recovery Administration had no fixed policy with regard to the question of control. Provisions for various codes were considered on the basis of the particular circumstances involved. In a number of industries deputy administrators by the type and nature of their questions during code hearings evidenced doubt as to the legality of the proposed clauses, unwillingness to assume responsibility for their approval and occasionally undisguised hostility to the subject. True, many codes with control provisions were approved during the early days of NRA but the adoption of such clauses did not imply an administrative policy in favor of such provisions. The chief reason for the approval of the clauses was probably the pressure applied by organized groups of employers and/or employees who, as "truly representative groups" usually carried considerable weight and influence. Many codes with control clauses contained high labor standards. Administration representatives were anxious to hasten the codification of such industries for the salutory effect upon other industries. Hence, the apparent willingness of some deputy administrators to accept control clauses may be said to reflect a desire to expedite the approval of such codes rather than outright acceptance of the principles underlying the clauses.

Uncertainty and doubt characterized the Administration's consideration of this subject until the very end of the code making and enforcement period. Few basic principles were established to guids the administration. Deputy administrators as a rule knew very little about the actual operation of the clauses. This situation is testified to by a document which may be accepted as an attempt by the administration to formulate a policy for owner operator control. Because of its importance and pertinence the document, consisting of a memorandum from Dr. L. C. Marshall, Executive Secretary of the National Industril Recovery Board to E. M. Jeffrey, bearing date of May 9th, 1935, and entitled "Memorandum from James E. Hughes, Research and Planning Division - Working Employers" is reproduced in its entirety:

> "I have just received a report from James E. Hughes of the Division of Research and Planning covering the operation of provisions in codes affecting employers doing the work of employees. Mr. Hughes has had various economic advisers inquire into the situation in the 100 or more codes affected. These advisers were asked to contact Deputy Administrators, the Compliance Division, the Labor Advisory Board and other possible sources of information.

"The pertinent paragraphs of Mr. Hughes' report are given below:

> In spite of the thoroughness of this search, only one conclusion can be reached - that is that the information available, by virtue of its scarcity, indicates that such provisions are quite generally being ignored. In the majority of cases there was no evidence of complaints in the Compliance Office and a complet blank was drawn when we questioned the Deputies on the subject. Some Deputies assumed that lack of complaint represented complete compliance while others felt that the provision was inoperative. In the former case I fear the Deputies were inclined to be a little optimistic.
>
> 'As a whole, it is my feeling that this provision is neither working nor workable. I have in my files the reports of the individual Advisers in case you wish to go into this matter more thoroughly.'

"In the light of this situation, there whould be a definite presumption against inserting in codes provisions restricting the hours that a bona-fide employer may work in his own business. This general presumption may be overcome by adequate showing of needs and facts; and it does not extend to safeguards against subterfuge, such as the designation of wage earners as ostensible partners, if such can be devised in form appropriate for seeming compliance and enforcement."

The formulation of policy is contained in the last paragraph of Mr. Marshall's memorandum. T e conclusion which may be drawn from the contents of this paragraph is that the administration henceforth contemplated following a policy of extreme caution with regard to owner operator control, one which in all likelihood would have been at variance with the expressed purposes of trade unions on the subject.

1. Influence of groups within NRA

A number of the National Recovery Administration's subsidiary groups and boards during various stages of codification expressed statements, declarations and opinions on the subject of owner-operator control which reflected their respective viewpoints. These statements and opinions are important because some of them represent experiences and convictions of groups which were vitally concerned with the problem. Moreover, NRA policy was in the last analysis a composite of the conflicting policies of its component groups.

(a) LABOR ADVISORY BOARD

The position of the Labor Advisory Board as regards owner-operator control was identical with that of union labor representatives. The policy of the Board favored owner-operator control not only to minimize possibilities of fraud and subterfuge in the matter of hours and compensation but for the purposes of increasing employment, raising wage levels

and extending opportunities for trade union organization. The philosophy of labor on this subject has elsewhere been expressed and does not require restatement. It is appropriate, however, to refer to an official Labor Advisory Board document which succintly expressed the position of the board on owner operator control and the reasons for this stand. This document was in the nature of a memorandum from Solomon Barkin, Assistant Executive Director of the Labor Advisory Board to James E. Hughes, Division of Research and Planning under date of May 15, 1935, entitled "Problem of Controlling Hours for owner operator." Citing Mr. Barker, citing the position of the Labor Advisory Board with regard to this problem, stated:

> "At the suggestion of Mr. Bishop, I am attaching hereto a list of industries where it is necessary to provide that the employer shall also be subject to the hours of work regulating employees. The reasons impelling us to request the inclusion of such a provision in the codes are assentially as follows:
>
> 1. The employer participates directly in the production processes.
>
> 2. Such participation in production deprives employees within the industry of significant amounts of work and thereby minimizes possible reemployment.
>
> 3. The absence of any control of the hours may lead to an increase in the number of such employers or members of the industry working on their own account, and to an increase in partnerships as a means of evading code provisions.
>
> 4. The control of Labor conditions for the rest of the industries is imperiled by the absence of this control.
>
> 5. The absence of such control results in inequalities of labor costs.
>
> "These industries are primarily those which consist of many persons working on their own account or small unite where the production process is such that an individual's labor is not interrelated significantly with the other workers and consequently can perform completed processes by themselves. These are generally industries where manual labor is significant and where mechanization has proceeded largely in the terms of hand tools and simple operating machines.
>
> "I hope that the above is a sufficient and proper background for approaching this problem.

"The control of this problem under codes has been largely of two types: (1) A provision that either the employers and/or members of the industry shall be governed by the hour provisions; and (2) specific opening and closing hours are established in order to assure compliance with the provisions in (1).

"I am submitting this list of industries to you so that some member of your staff may review it to indicate whether the same is an adequate list of the industries where such problems do arise in sufficient proportions to make regulations necessary, and whether other industries should be added."

The above memorandum may be accepted as the basis of the NRA Labor Advisory Board policy with regard to owner-operator control.

Legal Division.

The Legal Division of the National Recovery Administration was greatly concerned with attempts to control owner operator working hours. This concern was based on the belief that Section 5 of the National Industrial Recovery Act which read:

"Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof;"

might prevent any control of owner-operators' working hours. The Legal Division's representatives approached this question with conservatism and restraint. During a number of code hearings when the question arose legal advisers emphasized the need for caution in drafting phraseology for the contemplated control clauses. For example, at the hearing on the Code for the Art Needlework Association on January 16th, 1934 in connection with the attempt to include a provision to restrict the hours of "members of the industry engaged in production work," the NRA legal adviser, Mr. Birnbaum, made the following statement:

"This section clearly restricts the rights of individuals, and as such must be definitely substantiated by facts before it can be included in any code;****I tried to emphasize the fact at the very outset that because it is a limitation of personal rights, and if you look at it with a fair mind, you can see that it is -- it should be substantiated by definite proof that this industry must have this kind of protection or else unfair competition will exist; and unless such proof can be presented at least from a legal standpoint, I cannot see how it can remain in the code.***From a legal standpoint, unless it is definitely based upon evidence or facts to show that it is unfair competition, to members of this industry, no personal rights can be limited."

Another reference to the legal division's stand on the question of owner-operator control is found in connection with the hearing of the Code for the Fur Dressing and Fur Dyeing Industry. Here, the matter under consideration was a proposed clause to eliminate or at least limit co-operative enterprises which were established to evade the labor provisions of the code. During the course of a lengthy discussion on the subject Mr. Newman, of the NRA Legal Division stated:

> "We had the same question (owner-operator control - M. R.) come up in the manufacturing code. We tried to have inserted in the code a provision that was inserted in our labor agreements, that no more than two members of a firm or corporation be allowed to do any productive labor whatsoever. We wrangled around for several months and finally the legal division said it was illegal, and could not insert it in the code, but inserted a clause something to this effect, that no employee or employer shall perform any productive labor whatsoever, but only within the hours that are specified in this code, and that is from 8:30 in the morning until 12, and from 1 'til 4:30, and five days a week, which is from Monday until Friday. That is the way we got around it."

It must be remembered that in the absence of any general policy on the subject of owner-operator control, various legal advisers, interpreting the law on the basis of their separate study and judgment, were to arrive at different conclusions. This is shown by the variations in language and scope of the control clauses which were adopted. The restraining influence of the legal division is illustrated in a number of hours control clauses which included the phrase "to the extent permitted by the Act." Clearly, the inclusion of this phrase reveals doubt and uncertainty in the minds of the particular legal advisers as to the degree of control permitted by the so-called "Huey Long Amendment."

The application of Section 5 of the Recovery Act to owner operator control and especially the legal significance of the word "prevent" as used therein received the critical consideration of the Legal Division in August 1934. A memorandum was issued August 18, 1934, (*) which dealt with the judicial interpretation placed upon the word "prevent" in its relation to limitation of production in business units. This memorandum cited a number of cases pertinent to the subject. The conclusion reached was embodied in the following paragraph:

> "An individual entrepreneur cannot be stopped from doing his own work by the provisions of a code. However, if a code applying to the industry in which he is engaged prescribed the number of hours for its workers, he probably cannot lawfully work more than the prescribed number of hours. At least code provisions limiting the number of hours which one may work can be enforced against him if there is no unlawful control of the production of his business. It is believed that

(*) Memorandum of Law Concerning Hours of Labor Restrictions Upon Individual Entrepreneur, $175, N.R.A. Legal Research. Author-E. A. King. (Appendix).

production control, especially in emergency, is constitutional."

An analysis of the conclusion shows that it dealt with two propositions. The first concerned the right of owner operators to engage in productive, manual or processing occupations and the conclusion reached asserted the illegality of any code provision which prohibited an employer from following the vocation of manual labor or engaging in mechanical or processing occupations. The second proposition, on the other hand, upheld the legality of provisions limiting owner-operators when engaged in productive occupations to the maximum number of hours prescribed for workers in the particular codes.

(c) Industrial Advisory Board

The Industrial Advisory Board followed a flexible policy with regard to owner operator control. A review of transcrips dealing with discussions of code control provisions indicates that the board's representatives approved many clauses without comment. Approval in such cases may have been due to the recommendations of trade associations and other organized business units which frequently sponsored the clauses.

The adoption of a flexible policy was inevitable. The board was required to reflect the viewpoints of all business and industry groups, large and small, organized and unorganized. Thus, in industries where the majority of enterprises were composed of owner operators and the minority of large scale employers, the board found it expedient to carefully weigh the influence of both elements as related to the best interests of the particular industries.

If any conclusion may be drawn it is that while the Industrial Advisory Board supported attempts to regulate against owner operator subterfuge and fraud, it opposed clauses which by their language made it evident that adoption was sponsored chiefly by labor sources for the purpose of protecting labor standards. A case well in point is found in the slit fabric manufacturing industry (*) decided by the Advisory Council. An amendment submitted by the Labor Advisory Board proposed that "Any employer who does the work of an employee shall be subject to the provisions of this code as to hours of labor." The Administrative Officer referred the proposed amendment to the Advisory Council and the latter, in the course of its decision stated the following with regard to the position of the Industrial Advisory Board:

> "The Industrial Advisory Board (following its established policy on limitation of employers' hours) disapproved on the ground that many small employers might be unable to make ends meet and might be forced to shut down completely if forbidden to work overtime themselves."

An analysis of the limited material available indicates that the Industrial Advisory Board's policy on the subject of owner-operator

(*) Decision No. 206, April 2, 1935, "Hours of Employers doing Productive Work; Slit Fabric Mfg. industry, Page 343, Volume 4, Advisory Council Decisions.

control showed the following salient characteristics:

(1) Opposition to limitation or control in industries where the majority of enterprises were composed of owner operators;

(2) Favorable to regulation when necessary to combat fraud and subterfuge;

(3) Opposition (on constitutional basis) to control of one-man operators; i. e., entrepreneurs without employees;

(4) Unfavorable to regulation where it appeared that such control would chiefly benefit organized labor, and not industry.

The viewpoint of the board with reference to point #3 was obtained through informal conversation with Mr. Walter White, the former chairman of the Industrial Advisory Board.

(d) Consumers Advisory Board

As in the case of the Industrial Advisory Board, there is but little information in transcripts of code hearings to indicate whether during the course of early code negotiations the Consumers Advisory Board took any definite stand, one way or another, with regard to owner operator control clauses. However, in the closing days of the code enforcement period this board placed itself on record as being opposed to control clauses which allegedly in the interest of compliance, were designed to establish limitation of shop hours.

The attitude of the Consumers' Board may be discerned in connection with the appeal of several cases to the Advisory Council.

(1) In the case of the Slit Fabric Manufacturing Industry (*) the Board stated apropos a proposed amendment that it "has no objection if good reason can be shown for the amendment, although we doubt its enforceability and wisdom."

(2) In the case of the dental laboratory industry a definite division arose between owner operator laboratories and large establishments with most of the industry's employees concerning the question of a Code provision which authorized compulsory Saturday closing in any areas in which a majority of the resident dental laboratories voted for such action. The Advisory Council in its decision of May 16(**) 1935 indicated that the Consumers' Board had originally cited the case to the council because of the dissatisfaction of small laboratories with the operation of this particular provision. In this case the Consumers' Board assumed a position entirely at variance with that of labor and the code authority, both of which supported the provision as being in the best interests of the industry. The basis of the consumers Board's opposition lay in the fear that the dental profession - the only "customers" of the laboratories - would be handicapped in providing service to patients of the profession.

(3) In still another case - involving the precious jewelry producing industry (***) the board submitted to the council the question of shop hours limitation. The problem arose through a proposed amendment part of which read as follows:

> "the maximum hours hercin provided for productive labor shall be utilized only between the hours of eight (8) A. M. and six (6) P. M."

The proponents of this amendment urged its approval in the interests of compliance with labor provisions. when the amendment was submitted

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(*) See pages immediately preceding for discussion of this code.

(**) Decision No. 225, Dental Laboratory Industry, Page 396, Volume 5, Advisory Council's Decisions.

(***) Decision No. 231, May 25, 1935, Precious Jewelry Producing Industry, Page 427, Volume 5, Advisory Council's Decisions.

the Precious Jewelry Producing Code already contained a provision (Article III, Section 2) limiting employers when performing the work of employees to the employee maximum hours.

The Consumers' Board in expressing opposition to the shop hours limitation clause objected on the ground that "this alleged restriction of shop hours in the interests of compliance may be no more than a cloak for efforts on the part of the industry to restrict production, and that no showing has been made of the desirability or necessity of production limitation."

The above cases indicate that while the Consumers' Advisory Board concurred, albeit reluctantly, in approving clauses limiting the hours of employers when engaged in productive work, It opposed limitation of shop operating hours on the theory that this latter form of control encouraged restriction of production and therefore was inimical to the interests of consumers.

(e) Advisory Council

The Advisory Council in the early part of 1935 promulgaged several decisions which dealt exhaustively with the problem of owner operator control. Some reference to this decision has already been made in connection with the discussion of policies involving the Industrial and Consumers Advisory Boards.

In the slit fabric industry case (*) the council discussed the type of control attempted through the use of a clause stating that "any employer who does the work of an employee shall be subject to the provisions of this code as to hours of labor." The chief proponent of the clause was the Labor Advisory Board, but it is significant that the employers in the industry were reported as favoring its adoption. The Review Officer approved on the ground that "the deputy states that the purpose of this provision is to eliminate so-called partners who are brought in on a temporary basis as members of the firm only to evade the wage and hours provisions."

The council reviewed briefly the history of owner-operator control clauses and suggested two chief reasons for them; (1) to prevent employers from taking their wage earners into ostensible partnership so as to evade the wage and hours provisions of the code and (2) to prevent undercutting of prices by producers whose own excessive hours of work enable them to reduce prices.

The decision admitted the amendment would have the good effect of halting a certain type of code evasion, but it questioned the legality of controlling the hours of bona fide employers. Aside from the question of principle, the council advanced the following reasons to support its recommendation for disapproval of the amendment:

(*) See pages immediately preceding for reference to this case.

(1) The clause was unenforceable; the industry was composed of small shops (about 100 producers having approximately 1,700 employees)

(2) In the event of a test case a jury would be unlikely to convict a man for working hard in his own business

(3) The effect of such a conviction on public opinion might be bad

(4) This type of hour limitation might conflict with Section 3(a) of the NIRA, which bears on oppression of small enterprise

It is worthy of note that the council, notwithstanding its adverse recommendation because of the reasons cited, concluded by saying it recognized the danger of the custom alleged to be prevalent in the industry; i. e., code evasion through taking wage earners in as ostensible partners and suggested it would be sympathetic with efforts to devise safeguards against fictitious "partners" as heretofore defined.

The interpretation which may be drawn from this conclusion is that the Advisory Council concurred in the necessity of establishing owner-operator control clauses designed to curb fictitious partnerships, corporations and cooperatives but required the phraseology of such clauses to be definitive in character. It opposed limitation clauses which by their language were susceptible of controlling the working hours of bona-fide employers. This distinction is important because it shows a definite rejection of the claims of organized labor and industry (parcitularly the former) in many industries in which control of working employers' hours was necessary not only as a precaution against subterfuge, but as economic and social principles to effectuate the purposes of the Recovery Act.

In addition to the above, the Advisory Council, in a number of cases, rendered decisions involving the problem of opening and closing regulations, or shop hours' restrictions. The cases decided were the following:

(1) Fur Dressing and Fur Dyeing Industry (*)

(2) Dental Laboratory Industry (**)

(3) Precious Jewelry Producing Industry (***)

(*) Decision No. 199, March 21, 1935. Subject: Shop Hour Limitation Maximum Hours Compliance.
Page 327, Volume 4, Advisory Council's Decisions.

(**) Decision No. 225, May 16, 1935. Subject: Saturday Closing, Compulsory.
Page 396, Volume 5, IBID

(***) Decision No. 231, May 25, 1935. Subject: Limitation of Shop Hours Page 427, Volume 5, IBID.

(1) Fur Dressing and Fur Dyeing Case

The fur dressing and fur dyeing industry case concerned an application for repeal of an amendment providing shop hour limitations upon work in the fancy dressing and rabbit dressing divisions of the industry. Repeal was applied for by the code authority on the ground that the amendment had not improved enforcement as hoped and that the larger dressing establishments had lost additional orders to smaller shops which had no hesitancy in violating code prohibitions against work during week-ends and thereby secured those orders received late in the week for Monday deliveries which large establishments complying with the code were forced to refuse. Representatives of organized labor protested withdrawal of the amendment asserting that labor is "better off with no code than with only the restriction of overtime, which is most difficult to enforce." Labor asserted that the code authority had made no serious attempt at enforcement and demanded that enforcement be carried out. Mr. McLaughlin of the New York labor compliance office was quoted as having stated that until recently no cases had been referred to compliance by the Code Authority and that in his opinion the amendment limiting shop hours "is entirely fair, workable and enforceable." In opposition to this opinion, the Industry's representative cited dozens of situations that militant and conscientious enforcement could not apparently reach.

The Council decided that the definite indisposition of the Industry and of the Code Authority and of many employees themselves to endeavor further experiment with the amendment made its retention of slight or no value and recommended that the application to repeal the amendment be approved.

(2) Dental Laboratory Case

The dental laboratory case involved a provision for compulsory Saturday closing in any areas in which a majority of the resident dental laboratories voted for such action. Two decisions were rendered in this case. In the first decision the council concurred in the recommendation of the Consumers' Advisory Board that a stay in the operation of the clause be allowed. A reversal was noted in the second decision and the entire matter held in abeyance pending the then anticipated revision of codes. However, in the course of these decisions the council stressed certain guides to policy which because of their significance are cited herewith. The thought of the council was developed in the following language:

> "If there is an important social or economic gain to be secured through a mode of action upon which the great majority of the Industry is agreed, NRA is bound to respect it. If the over-whelming majority of an industry wants to bind all members to a course of action in which there is no particular harm and to which there is no strong objection from any source, NRA can excusably accomodate itself to the sentiment. If, however, there is no social or economic issue at stake, and if the objective of the majority is definitely opposed by the minority or by a considerable group of the customers of the industry, there is clearly no obligation on NRA to write a law about it."

The council then suggested that "in the forthcoming process of code revision, a strong presumption should be considered to stand against enactment of the kind of provision here considered (compulsory Saturday closing - MR) a presumption capable of being lifted only by incontestable proof that the ends of improved efficiency and compliance argued by the industry in its justification will be accomplished. If enacted, evidence of trouble in its operation should be sufficient cause for withdrawal."

(3) Precious Jewelry Producing Case:

The precious jewelry producing case involving the limitation of hours probably was the most important of the cases cited and evoked weighty and deliberate consideration. In all likelihood, had the process of codification continued the decision of the Advisory Council in this case would have contributed in great measure to the formulation of an owner-operator control policy for future guidance.

In this case, the council touched upon most of the factors involved in the attempted owner-operator control program; viz, limitation of shop hours, owner-operator competition and the general problem of the little man in business. A portion of the council's decision is cited below not only because of its relationship to the particular case but because in a general way it deals with various phases of the control program as viewed by the council and it attempts to clarify the issues involved for the guidance of future administrative policy. It is particularly appropriate to quote from this decision inasmuch as Dr.Marshall in submitting this case suggested that the council might also review, with shop hour limitation in mind, the "terms of the whole issue of the extent to which N.R.A. may safety go in developing detailed regulations for industry." This particular part of the decision follows:

> "The declared purpose of this provision ('The maximum hours herein provided for productive labor shall be utilized only between the hours of eight (8) A. M. and six (6) P. M.' - M.R.) is to assist efforts to secure compliance with Article III, Section 1 of the code dealing with employee hours of labor. The Deputy reports that during the depression many one and two-man shops have appeared, composed of former employees of the larger establishments. These shops are alleged to be operating at all hours, presenting a compliance problem with which neither the Code Authority investigators nor the Jewelry Workers' Union has been able to cope. The code limits employees to eight hours work per day. The small shops maintain no time clocks or time cards, and regardless of the time of the evening after six P. M. at which time investigators call on plants still operating, the explanation is always that the men have just started to work. The Industry believes that the only way to stop this kind of deception is to make it also a violation of the code for shops to operate at all after six P. M. Petition for this action was officially presented by the Congress of Precious Jewelry Producers Inc., which is reported to represent the great majority of the industry. The industry is supported in this stand by the labor unions concerned. Notice of opportunity to be heard on the proposed amendment was published in the usual manner and distributed to the members of the Industry. No objections were received.

The Consumers' Advisory Board objects on the ground that this alleged restriction of shop hours in the interest of compliance may be no more than a cloak for efforts on the part of the Industry to restrict production. They then proceed to argue that there has been no showing whatever of the desirability or necessity of production limitation. *****No evidence has been presented that the Industry is particularly interested in limiting output, whereas all elements in the Industry are agreed on the facts (1) compliance with the eight hour day provision of the code has broken down and (2) that the chief reason for its failure has been the lack of any means of proving that employees working after six P. M. had already worked a full day even though a moral certainty to that effect existed.

The Council is not greatly concerned about the possibility of this provision being used, in this industry, as an artful means of giving the force of law to curtailment of production. It is easy to believe that under present circumstances producers of luxury goods do not have to struggle to keep down production in the sense characteristic of heavily mechanized industries producing staple goods, which in turn supports an inclination to accept the provision at its face value.

The figure of the little man also appears in this picture. There is a provision in the Code (Article III, Section 2) which limits employers when performing the work of employees to the employee hours elsewhere prescribed. This type of paragraph is common to many codes. The purpose of the particular amendment here considered could not be fully realized without it. The Council assumes that this provision is not open to question in the immediate case. Yet it does arouse a little uneasiness about the future of craftsmen or very small employers in the kind of economy we are setting up. Many of these men virtually live by their ability and willingness to give service in unorthodox ways and to drive themselves for their own benefit a little harder than wealthier competitors. This sort of independence has been basic in the history and philosophy of American growth, and when it is hedged for purpose made legitimate by other phases of the program it has to be done cautiously. Standing against this thought, of course, are the fundamental considerations that led to the insertion of such provisions in codes in the first place, namely, the possibility that if small employers are left too free they will be enabled to put up a brand of competition against larger establishments which will force the latter in turn to lower their labor standards and so break down the entire code. This sort of proposition cannot be argued in the abstract. The only reason for admitting it at this point is to make sure that the existence of the problem is recognized and will be given due consideration in particular cases.

The Administration may also be properly concerned over the spectacle provided here of one provision being passed on its merits (limitation of man hours), a second to help enforce the first (limitation of employer hours), and now a third to help enforce the other two (limitation of shop hours). The use of laws for

sleuthing purposes has to be limited somewhere, which again is a point to be weighed in particular cases.

RECOMMENDATIONS:

General: The restriction of shop hours is a form of meticulous regulation of industry which the Council views with disfavor. There is no economic or social evil necessarily involved, calling insistently for action by the Federal Government. Furthermore, such regulation may act as a restricting force on production, - the limiting of establishment hours having quite different complications from the reduction of employee hours. In the one case, production can be increased only by increased capital investment, which may or may not be socially desirable; on the other, production can be increased by adding to the labor force, a clear social gain.

The Council finds two situations in which shop hour limitations may be permissible:

(a) Where restriction of production has been recognized as desirable social policy, and this is demonstrated to be the most effective mechanism for accomplishing this result;

(b) Where restriction of production will clearly not result, and the limitation of shop hours will serve as an important support to enforcement. This condition will usually appear only where there are many small shops. Furthermore, it should only be employed where the limitation of working hours for individual operators has been accepted by the Administration as necessary and desirable and after due consideration of the interests and point of view of small operators and labor.

This problem is a neat illustration of the proposition that devices cannot be approved or disapproved as such. We must look behind any particular device in any particular situation to determine the grounds for its approval or disapproval. Approval in one instance cannot be taken as precedent for approval in others, unless the governing circumstances are similar.

Specific:

The Council finds the proposed amendment to Article III, Section 1 of the Code for the Precious Jewelry Producing Industry, falling under class (b) noted above, and therefore recommends its approval. (See Decision No. 101)."

Several important points emerge in analyzing these decisions. These may be accepted as a guage recommended by the council for the Administration in treating the owner operator control program. In summary the points are:

(1) A flexible policy is necessary: i. e., different situations require different treatment.

(2) The wishes of a majority of members in an industry for a control clause do not necessarily imply that the objectives sought in the particular instance are matters of social or economic desirability. The question to be propounded in all cases is whether or not the proposed limitation clause is in the interest of the social or economic well-being;

(3) Though it is admitted that industry and business development has changed in that the economy now posseses many large scale enterprises as distinguished from its early characteristic - small establishments based on individual craftsmanship, care should be exercised in the enactment and administration of laws designed to promote efficiency and industrial harmony on the basis of this development, so as not to oppress the numerous small employers and craftsmen (owner-operators) who remain;

(4) Restriction of production may be socially desirable in some industries, but in all cases this must be definitely established before control clauses are adopted;

(5) Great care should be exercised in drafting control provisions. Where the purpose of a clause is to guard against subterfuge, the language employed should not indicate an intention to limit bona-fide employers.

In short, the Advisory Council recommended that the owner-operator control problem should be approached with caution and deliberation and decided in each instance on the basis of particular needs, experiences and circumstances.

G. THE CONTROL PROGRAM IN OPERATION

It is unfortunate that for the purpose of this survey little information is available with regard to the degree of success or failure which characterized the operation of the control clauses in the more than 100 codes. The existence of adequate data on this subject would materially assist definitely answering such questions as 1, the extent to which labor and industry cooperated in matters of enforcement, 2, the practicability of the control clauses, 3, the effect of the provisions in achieving NIRA objectives, and last but not least, 4, the reaction of owner-operators to the provisions. It will be recalled that L. C. Marshall, former Executive Secretary of the National Industrial Recovery Board points out the scarcity of information on the subject in his memorandum (*) on owner operator policy to E. B. Jeffery. In this memorandum Mr. Marshall stated apropos the scarcity of compliance and enforcement data:

"In spite of the thoroughness of this search, only one conclusion can be reached - that is that the information available, by virtue of its scarcity, indicates that such provisions are quite generally being ignored. In the majority of cases there was no evidence of complaints in the Compliance Office."

The assumption embodied in Mr. Marshall's conclusion while generally indicative of the stiuation, may be susceptible of some qualification in that absence of data need not always be interpreted to indicate that the control clauses were disregarded. If any gauge for the determination of compliance may be set up with the meager information available it may perhaps be based on the extent of organization in the particular industries. Thus where industry and labor were highly organized and the control clauses adopted as the result of joint efforts, it is very likely that a fair degree of compliance prevailed. By the same token it may be assumed that industries and trades where labor was weak and code authorities impotent, control clauses were ineffective and in many instances inoperative.

1. Problems in Enforcement

The attempt to control the maximum hours of employers and other owner operators inherently carried with it a number of problems. Because of incomplete voluntary compliance it was necessary to devise ways and means to enforce the control clauses. Most of the problems arose from this difficult task.

If it may be assumed that in general enforcement was difficult, it was undoubtedly made so by the following conditions which existed:

(a) Misunderstanding as to the scope of the control clauses.
(b) Difficulty of detecting and/or proving violations.
(c) Legal difficulties
(d) Traditional sympathy for the "little fellow".
(e) Weakness of some unions and code authorities.

These conditions will be briefly reviewed.

(*) See Factors in Development of NRA Policy on Subject of Owner Operator Control - preceeding pages.

(a) Misunderstanding as to Scope of Control Devices

The first difficulty was basic and resulted from hurried drafting of control clauses and the apparent failure of some of the interested groups to circumscribe precisely, or agree upon the areas in which the provisions were intended to operate. This is supported by the fact that many transcripts of hearings on codes with owner operator control clauses, failed to reveal any discussion whatsoever, or at best showed extremely limited consideration of the problem in the particular industries and the relationship of the proposed clause to the problem. (*)

Because of the absence of adequate discussion and explanation of the proposed corrective measures in these cases it is possible that misunderstanding and confusion existed in the minds of administrators and advisers as to the scope of the provisions. It is perhaps safe to assume that in a number of instances, modified provisions, more susceptible of enforcement than those adopted, have resulted, had the clauses been subjected to a thorough analysis as to scope and language. This actually resulted in a number of cases.

The phraseology of some of the clauses was such as to permit application of the provisions to bona-fide employers as well as to fictitious partners and stockholders. While it is true that this is precisely what many labor and industry leaders intended, it is doubtful that Administration representatives would have permitted such types of clauses to enter the codes, had they possessed a clearer idea of the implications involved.

The weakness of the language employed in many control provisions became evident only after adoption and undoubtedly contributed in great measure to the poor showing in compliance and enforcement.

(b) Difficulty of Detecting and/or Proving Violations

A major obstacle to effective enforcement of owner operator control provisions was the difficulty of detecting and/or proving violations. The chief reason for this difficulty were twofold; (1) the unwillingness of employees to prefer charges and (2) the difficulty of proving violations through other means.

As to the first proposition it should be borne in mind that the average owner-operator establishment consisted of an employer and a few workers. The relationship between employer and employees in such enterprises usually was more personal than in the case of larger establishments. Thus, though employees may have known of their employers' hours violation a number of reasons may have contributed to their failure to prefer charges. These included the belief in a sense of honor and duty to an employer with whom employees stood in close personal relationship, fear of loss of position through the ability of the employer to detect the source of the complaint, and a conviction that longer hours for the employer were necessary as a means of maintaining competition with larger and more successful firms.

(*) As a general rule this was more true as regards clauses sponsored by industry groups than by labor unions.

The difficulty of proving violation in cases where employees refused to prefer charges was pronounced. Many owner operators conducted their enterprises in private residences, garages and other places difficult to police. Investigators experienced trouble in entering such premises and in establishing prima facc evidence of violation even where the facts disclosed upon entry warranted apprehension of the owner-operator as a violator. An excellent illustration of these difficulties is found in the dental laboratory industry. In the city of Washington several laboratories suspected of operating after code hours were visited by investigators. (*) Among the circumstances which contributed to the suspicion was the fact that the window shades in the particular laboratories were frequently pulled down late at night while the lights burned. Upon entering one of these laboratories, its owner when apprehended in the act of repairing a dental bridge claimed he was performing an "experiment" and was not engaged in "mechanical work." Obviously proof of hours violation in such a situation was difficult of presentation.

Another illustration of difficulty in proving violations may be found in the precious jewelry producing industry. When the Labor Advisory Board sponsored an amendment to establish opening and closing hours for shops in this industry the case was submitted to the Advisory Council. The Council in its decision pointed out that:

"The Deputy reports that during the depression many one and two-man shops have appeared, composed of former employees of the larger establishments. These shops are alleged to be operating at all hours, presenting a compliance problem with which neither the Code Authority investigators nor the Jewelry Workers' Union has been able to cope. The code limits employees to eight hours work per day. The small shops maintain no time clocks or time cards, and regardless of the time of the evening after six P.M. at which time investigators call on plants still operating, the explanation is always that the men have just started to work.****" (**)

Many owner-operator establishments were almost entirely staffed with members of the owners' families. Under such circumstances it was almost impossible to expect any cooperation on the part of nominal employees in connection with attempts to prove alleged hours violations. This fact played a prominent part in the low degree of enforcement in some of the retail and service codes.

In general, it may be concluded that in a great many industries the obstacles to effective enforcement and/or establishing proof of violation of hours provisions by owner operators were such as to preclude the possibility of serious efforts in that direction. In those industries the control provisions remained inoperative.

(c) Legal Restraints

The conviction that many owner-operator control provisions were illegal may have contributed in great measure to poor enforcement. Data previously cited from transcripts indicate that at least some legal advisors doubted

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(*) Facts taken from correspondence Files, Dental Laboratory Industry, #142.
(**) Decision No. 231, Precious Jewelry Producing Industry May 25, 1935, Advisory Council's Decisions, Volume 5, Page 427.

the enforcibility of the provisions. Informal conferences with some of the former deputy administrators in charge of codes (*) with owner-operator control provisions point to the fact that this belief was shared by them.

The major legal problem which affected attempts to enforce owner operator control clauses was the fear that the Recovery Act prohibited the limitation attempted by these clauses. Reference to this problem has been made elsewhere herein. (**) It is also pertinent to note that another factor may have influenced enforcement of some codes with owner operator control clauses. This second proposition concerns the intra state character of some of the trades and industries (***) which were codified and in which owner operator control was attempted. While the nature of this report does not permit an extended development of the problems involved in the attempted regulation of industries which were intra state in character, it should be mentioned that a belief existed in some quarters both in and outside of NRA that enforcement of some of these codes would be difficult, in consequence of the constitutional restraint upon Federal regulation of intrastate commerce. A number of cases involving the service codes were subjected to judicial test in state and Federal Courts and their validity as to the propositions tested, but there is no record of any attempt to enforce owner-operator control provisions of these codes through judicial proceedings.

That some doubt existed in NRA circles as to the legal basis of enforcement in connection with codes of this type may be gauged by the fact that encouragement was extended to the development of state recovery acts to facilitate local enforcement, such as the New York State Shachno Act.(****)

(*) Dental laboratory,
barber shop - laundry.

(**) See Legal Division Policy. Also, APPENDIX J Memorandum of Law concerning hours of Labor restrictions upon Individual Entrepreneurs.

(***) Some of the service trades in particular.

(****) An Act through which New York State attempted to extend state validity to codes, orders and decrees executed under the NIRA and to designate such codes, etc., subject to enforcement by State as well as Federal authorities. Declared unconstitutional by the highest court of the State.

A number of States on their own volition enacted State Recovery Acts modeled after the NIRA. It is owrthy of note that under one of these state recovery laws (Wisconsin) control of owner-operators in a service trade was attempted through a code and such control denied by the Courts. The case involved the barber shop Industry and the court in its opinion held:

> "The Code of Fair Competition for the Barber Trade adopted under the Wisconsin Recovery Act, is void as to one-chair shop barbers insofar as it fixes the number of hours which such a barber may work in his shop, and the amount which he may charge for services. The operation of a one-chair shop barber shop does not constitute trade or industry within the meaning of the Act."(*)

In summary, while there are few factual data to support any conclusions, it does appear likely that had the question arisen of attempting to enforce owner-operator control provisions in codes of industries not clearly interstate in character, a policy of restraint and caution would have influenced NRA enforecement.

(d) Public Opinion and the "Little Fellow"

Public opinion was a factor of considerable importance in influencing enforcement of owner operator control clauses. Traditional sympathy for the efforts of the "little fellow" to earn a livelihood in the face of large scale corporate and chair competition obviously necessitate a careful approach to the problem of enforcing code control provisions which in some of their implications were believed to contravene established economic and social policies. It should be remembered that the fear that NIRA might result in oppression of small enterprise emphasized by the late Senator Long during consideration of the Recovery Act by the United States Senate resulted in the adoption of an amendment to safeguard the right of the individual to engage in manual labor and to sell or trade the products thereof. Many persons including some with considerable influence disagreed with the contention of organized Labor and employer-groups that competition of the type offered by owner operators lowered the general levels of competition. These individuals decried attempts to regulate working conditions affecting small enterprises, which of course included owner-operators. They based their objections to such control on the fear that it would drive many owner-operators out of business. Among the reasons generally advanced for a policy in favor of owner-operator establishments was the claim that a policy in favor of owner-operator establishments was the claim that in many industries these served as answers to the problem of workers displaced by technological improvements. It was also claimed that possibilities of owner operators ruinous competition to establishments with many employees were limited, due to their small output plus their occasional tendency to keep prices up.

(*) State of Wisconsin V. Dudley et al., Cir. Ct., Wood Co., Wisc., Oct. 30, 1934, (Park, J.) Leading Decisions - N. R. A. Office Manual, Part V. VII-B, V-E-44d.

Undoubtedly, protests against alleged oppression of small business which were made periodically during code administration, by persons prominent in public life (*) contributed to a cautious policy in connection with enforcement of owner operator control clauses. A question of practical politics was involved as it was feared that if NRA was accused of persecuting the "little fellow" it would suffer a loss in prestige.

That this fear was probably based on ample grounds is the conclusion one may draw by harking back to public reaction manifested in connection with the arrest and conviction of a tailor in the famous Maged case (**) on the ground of violating the price provisions of the New Jersey Cleaning and Dyeing Code.

2. Summary of Available Enforcement Data

Some meager date are available with reference to enforcement of owner operator hours control provisions. This information is presented in Tables 19 and 20 (Appendix K).

Table #19 summarizes hours violations complaints affecting owner operators under all codes, and table #20 presents comparable data for several selected industries.

The information contained in these tables is derived from complaint statistics for violation of labor provisions compiled by the Statistical Section of the NRA Field Divisions and the material is based on complaints of violations handled by state offices of the compliance divisions.

Only fragmentory data are contained in the tables. The statistical section in preparing the data on which the tables are based pointed out that the cases included in the report are those which state offices of the Compliance Division investigated and handled to a conclusion, those which were handled in part by other agencies but subject to the final responsibility of the compliance offices and those investigated and pending on May 27, 1935. The following classes of cases were not included: those referred for further action to the Washington office of the Compliance Division, to regional offices, or the Federal and state enforcement agencies; cases referred to code authorities in the first instance; and complaints referred to special agencies such as the Petroleum Labor Policy Board and the various textile boards. Complaints which were rejected as being insufficient or not setting forth facts constituting violation ("primary objects") are also excluded.

Three types of violation owner operator hours control clauses are included in the tables. They are as follows: (1) Employer working more than code maximum where prohibited; (2) Exceeding permitted number of persons working unlimited hours; (3) Working during hours of the day not permitted by code.

(*) The Darrow Report. Members of the United States Senate.
(**) State v. Maged, C.P. Ct., Jersey City, N. J. Apr. 20, 1934. (Kinkead, J.) Office Manual 5 - Leading Decisions-VII-C V-E-45.

Table #19, which presents a summary for all codes, classifies the violations under these three types, whereas table #20, which deals with several selected industries, covers the types of violations on a composite basis.

A total of 695 cases is presented by Table 19. Of these, 531 were adjusted, 133 dropped and 31 pending as of May 27, 1935.
The report upon which the tables are based explains the adjustments as "dockets satisfactorily closed by the state office" and states that "While the Division's policy as to adjustment underwent development and change during the 19 months of its existence, the adjustment of working conditions within an establishment to bring about full conformity of working conditions with code requirements was always considered essential."
Dropped cases represent those in which violations were found but where administrative action could not effect adjustments and where litigation was not desirable.

Table #20 presents data for the following industries: baking, barber shop, dental laboratory, pleating, stitching & bonnaz, etc., retail solid fuel, and Schiffili, hand machine embroidery.
A total of 179 cases are covered. 70 were adjusted, 83 were declared "no violations" and 26 were dropped. The largest number of cases was indicated under Barber Shop Trade violations.

In the absence of satisfactory explanatory data as regards the nature of the reported "adjustments" it is difficult to arrive at any conclusion, concerning the success or failure of these enforcement activities. Further study of individual case records would undoubtedly assist in arriving at a satisfactory understanding of this problem.

CHAPTER III.

AN APPRAISAL OF THE PROBLEM AND THE PROGRAM

A. SOME QUESTIONS AND ANSWERS.

The NRA program of control for owner operators was developed on the basis of trial and error. The code control devices, like other features of the recovery program, were formulated with little precedent and with only partial understanding of all the implications and consequences involved. It was assumed that an emergency situation necessitated departure from past economic and social practices and the program for owner-operator control was advanced as an answer to one aspect of the emergency.

An appraisal of the problem and the program must consider the following three basic questions and attempt to formulate replies on the basis of available data:

(1) Was a program for owner operator control necessary under NRA?

(2) Was the adopted program successful?

(3) What were the salient weaknesses of the particular program?

1. Necessity For An Owner Operator Control Program

The owner-operator control program was presented to and accepted by NRA essentially as a plan on behalf of organized labor to meet certain problems which had proven troublesome over a period of years. The demand for a control program, in addition to its labor origin, was supported by a considerable number of trade associations, particularly those which traditionally maintained friendly relations with organized labor. The control devices were urged as necessary to overcome obstacles to the achievement of NIRA objectives.

The problem of control concerned itself with the following:

(a) Limiting the hours of work of individuals; i. e., employers, members of industry operating on their own account and members of owner-operators families;

(b) Limiting production;

(c) Imposing minimum rates of compensation for owner-operators and members of their families.

To achieve the first objective, codes adopted devices which restricted employers when engaged in productive occupations as distinguished from managerial activities, to the maximum number of hours prescribed for employees. In addition, some codes limited the number of co-proprietors or partners permitted to engage in mechanical operations and manual labor.

The second objective - limitation of production - was attempted through the establishment of starting and finishing hours regulations, applicable to all persons, including employers, proprietors and members of industry operating on their own account. The primary purpose in establishing this type of control was to insure the successful functioning of the first method of regulation, namely, the observance of maximum hours by working employers and other owner-operators.

Finally, in a limited number of codes, devices were established to control the compensation of owner-operators and members of their families. This was done to prevent price cutting based on disregard of labor costs.

A review of the reasons advanced by the proponents of code control devices shows the following arguments advanced:

(1) The large number of employers participating directly in the production processes made it important that they be considered in any program based on maximum hours of operation and work.

(2) Such participation in production deprived employees of significant amounts of work and thereby minimized possible reemployment;

(3) The absence of control devices resulted in an increase of fictitious partnerships to evade code provisions;

(4) The absence of such control devices resulted in inequalities of labor costs;

(5) The control of labor conditions for many industries was imperilled by the absence of control devices.

(6) The absence of control clauses enabled owner-operators to maintain unfair competitive advantages over other employers who were subject to code provisions.

In support of these reasons trade union and trade association representatives cited facts relative to conditions in the several industries which in their opinions necessitated a program of control such as was presented to NRA. (*)

Employers were concerned with the program of control, although not to the same extent as labor. Such factors as price cutting, sweatshop products and low labor costs based on poor workmanship, were of vital interest to employers who operated under what may be described as an enlightened labor policy, which rested on observance of reasonable hours, fair wages and collective bargaining with labor.

Labor had one advantage over employers in that it was united on the necessity of a program whereas the latter were frequently in disagreement.

(*) See testimony of proponents of control devices - Chapter II - The NRA Program of control

This was due to the large number of owner operators in some industries. The division of employers on this subject was reflected in the attitude of the Industrial Advisory Board which was compelled to consider the influence and interests of owner operators. This board, as has been previously indicated, pursued a somewhat non-committal policy of expediency, which in some instances manifested itself in serious opposition to control devices. The position of the Labor Advisory Board, on the other hand, was consistent in its adherence to a program for control.

When the owner-operator control program was adopted serious unemployment prevailed in many industries. Reemployment and the promotion of standards of fair competition were stressed as primary objectives. The attainment of these objectives was necessarily influenced and affected by the factor of owner-operator competition. Trade unions and business groups obviously had no definite idea as to the increase in employment that might result through the enactment of their program, nor could they reduce to tangible equations the anticipated degree of improvement in the levels of competition. They could and did outline a broad policy based on experience and anticipated need. This policy declared that the limitation of owner-operators working hours and the reasonable control of other factors which entered into the functioning of these types of enterprise, would assist in reducing unemployment, stabilizing labor conditions and improving standards of business competition. The trade unions, with years of experience in the matter stated they were in the best possible position to prescribe the necessary remedies.

If the control program is considered primarily as a plan adopted on behald of labor and if the reasons advanced in support of the program are accepted as valid - and no evidence appears to the contrary - this program, or at least some method of control calculated to accomplish the same purposes was necessary to effectuate the purposes of the Recovery Act. This conclusion rests upon the validity of the facts presented to indicate the competitive significance of the owner-operator.

2. Success of the Particular Program

Was the particular program of control which was adopted by NRA successful? A comprehensive and thorough evaluation of the operation of the program would require much additional study. No complete appraisal is possible with access to only NRA sources. The scarcity of NRA material has been previously referred to in connection with Mr. Marshall's memorandum on compliance and enforcement.(*)

In this memorandum Mr. Marshall pointed out that a thorough exploration of NRA sources failed to disclose data to support any conclusion as to the manner in which the control devices functioned. In consequence of this situation he indicated one was free to reach one of two conclusions, namely; either the devices were uniformly effective and the program enforced or the clauses were totally disregarded and no attempts made in the direction of enforcement. The author of the memorandum indicated that he favored the latter conclusion.

(*) See Mr. L. C. Marshall's memorandum to James E. Hughes - Chapter II.

Mr. Marshall's conclusion on any subject pertaining to NRA deserves high regard. In his position of responsibility he received unusual opportunities to observe and learn many facts relating to the operation of the codes. Yet it must be remembered that in this instance his conclusion was by his own admission not based upon substantial, factual information.

The NRA program of control was a program by and on behalf of organized labor. To a lesser extent it was sponsored by trade associations. In the absence of NRA sources of information and material and in the pursuit of further analysis and appraisal of the program's operation, the files of trade unions and trade associations should be studied and their officers consulted. Because of the limitation of time this has not been done. Until it is accomplished no one is able to state with assurance whether or not the program was successful and in the latter instance what degree of success characterised its operation.

Inasmuch as an objective appraisal cannot be undertaken the only conclusion possible under the circumstances must of necessity be in the nature an opinion based upon limited NRA data, and an understanding of the importance of the owner-operator problem to the labor organizations which proposed it. On this basis, it is concluded that the program was successful in the industries which were highly unionized and where strong code authorities existed. It should not be difficult to appreciate the reasons for this conclusion. Trade unions and code authorities may be presumed to have worked in harmony in the enforcement of the control devices because they had a common objective in view. These organizations possessed intricate and tested machinery for collective action, which could easily be employed in detecting violations and in policing owner-operator establishments. Organized workers in these industries traditionally regarded their unionism in a very serious light and were prepared to make sacrifices and subordinate individual desires to achieve a common purpose. In other words, it is reasonable to assume that trade union members willingly constituted themselves committees of enforcement to observe operation of owner-operator control devices and detect violations. Many of these labor organizations were financially in a position to undertake and support ambitious programs of code enforcement. And, the fact that few instances of violation reached compliance officers need not be interpreted to indicate that enforcement was not undertaken. It is more logical to assume that in highly organized fields, initial violators were sufficiently impressed by the persuasive efforts of the organizations of workers and employers and were thus restrained from further violations. The influence of some of these labor organizations during the NRA period as well as their possible display of strength may be guaged from their increase in membership. As an illustration, the case of the International Ladies Garment Workers Union may be cited. This organization exercised jurisdiction over a number of industry divisions which were concerned with the owner operator problem. Immediately prior to the passage of the NIRA the I.S.G.W.U. had a membership of about 25,000, but within several months after the Recovery Act's enactment this had increased to 150,000, (*) and the organization

(*) Membership records - American Federation of Labor

boasted of an almost 100% unionized field. Obviously, an organization capable of employing NIRA labor provisions and NRA machinery to achieve such phenominal gain in membership, may be presumed to have vigorously insisted upon the enforcement of labor provisions in codes affecting its members, especially clauses which, if consistently violated, would have seriously interferred with the union's program for reemployment and joint stabilization with management of the industry.

The same situation was applicable in varying degrees to the unions in the fur, printing and building construction trades. Because of these facts it is believed that an analysis of the material and data which is undoubtedly in the possession of these organizations will support a conclusion that owner operator control devices were effective in these industries and that where compliance was not voluntary in nature, the collective efforts of the unions and organized employers resulted in the necessary control and enforcement.

By the same process of reasoning the conclusion reached with reference to the operation of control devices in industries not unionized and without strong code authorities, is that in all likelihood initial efforts to enforce control clauses soon yielded to a realization of the practical obstacles in the way. In the course of time, and with increasing lack of proper administration and enforcement the control devices became inoperative.

3. Weakness of the Particular Program

A number of factors associated with the owner operator control program point to a fatal weakness which undoubtedly contributed to poor enforcement in some trades and industries. This weakness manifested itself in connection with the hesitency and uncertainty with which the Recovery Administration approached the problems of administration and enforcement. This situation is evidenced by the fact that after the program had been in operation almost two years, the Administration, in a number of instances, admitted it did not know whether an owner operator control program was desirable. (*) On various occasions during this period the NRA emphasized doubt as to whether it could legally even undertake to regulate the hours of employers and members of industry without violating several provisions of the Recovery Act. Yet, in the face of such doubt and uncertainty, control devices were incorporated in more than 100 codes.

It seems reasonable to assume that many weaknesses in administration and in enforcement procedure of owner-operator control devices existed. It is not possible to describe the exact nature of these weaknesses, assuming they existed, because no serious effort seems to have been made to secure information as to the manner in which the control devices were administered or the type and degree of enforcement which was applied. It is probable that the weaknesses in this regard manifested themselves in

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(*) See decisions of Advisory Council cited in Chapter II.

connection with methods of industrial organization and in lack of proper enforcement machinery. Irrespective of all other assumptions in the premises, one seems to be inescapable; i.e., that the Administration, after granting concessions in the form of control clauses to labor organizations, established a policy which virtually disregarded the control devices.

It is believed that two reasons contributed to the development of this policy of indifference. The first consisted of the apparent unwillingness to test the issue of whether or not the NRA could legally enforce the control clauses. The second was the belief that a considerable section of the American public was opposed to the objectives of the control devices which were (a) control of small employers' working hours and (b) indirectly, the limitation of production.

Viewed in restrospect it does not seem logical that the question of possible illegality should have prevented effective administration and enforcement. Those who were charged with the administration of the Recovery Act realized that sooner or later the basic economic and social principles upon which the entire fabric of the NIRA was based would clash with the prevailing conceptions of legal realism and as a result face the test of supreme judicial scrutiny. The Advisory Council s stressed the question of legality when it urged a policy of caution and restraint in connection with administration of control clauses (*). Yet it is a fact that other clauses of equally doubtful legal validity were administered and enforced in serious fashion. The fact that the latter clauses were related to the field of fair trade and not labor practices may be construed as perhaps indicating a greater zeal on the part of industry than that manifested in connection with owner-operator clauses.

Possible trends of public reaction to owner-operator control undoubtedly played an important part in developing a cautious attitude on the part of the Administration. On the one hand, the attempt to ameliorate the conditions of workers was inextricably coupled with owner-operator control and the Administration was peedged to this goal. Proponents of control devices frankly asserted they regarded many owner-operator enterprises as economic growths which obtained nourishment only at the expense of organized workmen and stabilized business conditions. They urged a policy of restriction for the common good. On the other hand, the Administration was faced with the necessity of establishing and defining that uncertain line which separated reasonable restriction in the public interest with what some smight term oppression of small enterprise. The Administration was also confronted with the fact that owner-operator control was part of a more complex and

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(*) See Opinions of Advisory Council - Chapter II.

controversial question, namely; whether the public, through government, should encourage or restrict the many thousands of small establishments, most of which operated on a very narrow margin. In its broadest aspect, this question was associated with the basic problem of deciding between an industrial policy committed to laisee fairre or one in the direction of planned control.

In view of these facts it may be questioned whether the NRA, functioning as it did under an emergency charter, with a limited tenure of existence, should have added an additional charter of controversy to its kaleidoscopic history, by pursuing a policy of vigorous administration and enforcement of the control devices. Consequently, some will conclude that NRA was justified in adhering to a plicy of indicision and caution. The writer, however, is inclined to take an opposite view. The owner operator control clauses represented integral parts of codes. As such these devices had the force of law and should have been vigorously administered and enforced. Until such time as factual data established the impracticability of the clauses, or their imcompatibility with the more general objectives of the Recovery program, a sincere effort should have been made to demonstrate that the provisions were effective. It should be borne in mind that the codified industries, where labor was sufficiently organized and potent to insure on its own accord compliance with control provisions, were relatively few. In the majority of the 100 or more codes which contained owner operator control devices industrial and trade union machinery for effective enforcement was entirely lacking. Government was expected to chart an administrative course and develop the proper machinery for compliance. If, therefore, it may be assumed that the control provisions were disregarded and inoperative in the unorganized industries, NRA must accept a measure of responsibility for failing to effectuate the purposes of the control devices in these industries.

At the very beginning of the codification period it was incumbent upon those charged with administrative and enforcement responsibility to explore with as much throughness as possible, the advantages and disadvantages of owner-operator control The results of such investigation would have enabled all those interested in the problem to determine the limit within which effective administration and enforcement could be undertaken.

Had this been done, it would have been possible to establish a guide to policy for all industries confronted with the problem during the remaining NRA days as well as to compile a source of invaluable information for the future, should this perplexing question again arise.

B. SUPPLEMENT

SUGGESTIONS FOR FURTHER STUDY

The survey entitled "The Owner-Operator Problem and the National Recovery Administration" is by no means complete. In its present form the discussion merely presents the nature of the problem and traces historically the efforts of interested trade union and industrial groups to attempt a partial solution through machinery and devices made possible by the National Recovery Administration.

It is obvious that the problem in its broadest aspect possesses ramifications which extend far beyond the limited analysis to which the question was subjected as the result of NRA code controls. A discussion based on this wider perspective necessarily entails an entirely different approach and requires careful consideration of the factors involved in the position of small business enterprises in the modern economy. Such a discussion would involve an almost unlimited range of material, quite apart from all NRA and related sources. It is, therefore, far beyond the scope of this assignment. However, even though the problem is viewed strictly from an NRA perspective a great deal of additional work is necessary before this survey can be considered satisfactory or thorough. As previously pointed out, the history of the control devices in operation should be depicted and a comprehensive evaluation of NRA experiences made. Possible sources of material on this phase of the inquiry are suggested in Chapter III.

An investigation of trade union and trade association representatives and files, if undertaken, could profitably utilize some sort of a questionnaire, sufficiently broad in scope to elicit information on most of the factors associated with the owner operator problem and its consideration by NRA. A questionnaire of this type has been developed by the writer, and is attached hereto. It may guide anyone who wishes to pursue the further study of the problem.

This questionnaire covers the following subject matter:

(a) Causes of owner-Operator competition.
(b) Methods by which this type of competition is carried on.
(c) Experiences in attempting to control owner-operators through NRA codes of fair competition.
(d) Experience with public regulation affecting owner-operators.
(e) Industry and labor efforts to raise the levels of competition among owner-operators.

It should be noted that the particular questionnaire is sufficiently flexible in character to permit whatever changes and modifications prove necessary.

SOME ISSUES UNTOUCHED IN CONSIDERATION OF PROBLEM

In considering the general nature of the owner-operator competitive problem a number of questions and issues presented themselves as appropriate for discussion and analysis which the limitations of time and data made it impossible to consider. Several of these issues are presented herewith as questions for further study:

(1) The Owner-Operator and the problem of Unemployment.

(a) The small unit and owner-operator enterprise as answers to technological unemployment.

(b) Public relief expenditures as affected by the owner-operator.

Many persons contend that restriction of owner-operator is socially undesirable because it eliminates opportunities for individuals displaced by development of machinery as well as other causes to earn a livelihood by engaging in this type of enterprise. It is also claimed that restrictive control of owner-operators result in additional burdens upon public relief, especially during periods of economic distress.

(2) The relationship between owner-operator establishments and marginal consumers.

What about the marginal groups (white collar, etc.) whose low earnings necessitate cheap services and goods provided by certain types of owner-operators? Even though some of these goods and services may be sub-standard, marginal workers cannot afford to pay more. The elimination of owner-operators, it is claimed, may seriously jeopardize this type of consumer.

3. The basic question of whether production control, obtained through (1) limiting hours of work for small employers, (2) closing of shops, stores and on plants between specified hours and/or on specified days per week and (3) limiting the use of machinery, requires considerable exploration and analysis, even though the discussion be limited to the NRA program of control as regards owner-operators. A comprehensive treatment of this problem can be had only with the possession of the necessary data showing the results of the NRA program.

Name of Trade Association (union) Address

SCHEDULE

PLEASE CHECK ON THE BASIS OF YOUR KNOWLEDGE, OBSERVATION, STUDY AND EXPERIENCE:

"Owner-operated establishements" are establishments operated solely by the owner or proprietor or by the proprietor with a few employees but in which the proprietor performs some duties similar to that of the employees.

1. Does the competition offered by certain types of "owner-operated" establishments constitute a problem in your industry? In what way?

-- Yes -- No

If answer is yes, kindly indicate by the use of an appropriate definitive or discriptive word or phrase the extent to which theproblem affects your group. For exampe, is the competition.

-- Extensive -- Limited -- Unusual (in what manner)

Indicate available statistics covering establishments conducted by owner-operation.

Total Number of Establishments .....
" " " " with no employees ....
" " " " " one " ...
" " " " " two " ...
" " " " " three " ...
" " " " " four " ...
" " " " " five " ...

Total Number of employees in Industry .....

If you have a breakdown on the estimated total number of units in the industry, estimated total number of owner-operator establishments and estimated total number of employees, State by State, kindly submit such data.

Does this problem in your industry manifest itself in all sections of the country to an equal degree or is it centralized in various geographic localities? Explain.

Is the problem particularly acute in certain metropolitan areas? If so, list the most important cities.

II

The following are suggested as probable or possible causes or basis of competition of owner-operators with other members of the industry. Check those pertinent and number in order of importance:

-- Use of obsolete, cheap or deficient Equipment and materials
--Installment buying of equipment
-- Obsolete methods and standards
-- Personal relationships
-- Unrestricted working hours
-- Seven day working week
-- Inadequate safety & health laws
-- Inadequate inspection on basis of existing laws
-- Sacrificing capital investment
-- Low overhead
-- Combination of home & shop
-- Homework
-- Employment of family
-- Lack of safety appliances

Lack of Insurance:
-- Accident Liability
-- Workmen's compensation

(A general paragraph or two giving some detailed information on items checked will be helpful)

III

Is competition maintained by owner-operator or by any of the following methods? Check those believed applicable and number in order of importance:

-- Free service
-- Combination of services for less than specified price of each service
-- Special services
-- Unethical solicitation of business
-- Type of credit extended
-- Accepting work from outside salesmen on commission basis only
-- Unfair discounts
-- Rental of part of premises to other one-man operators
-- False billing
-- False labelling or marking
-- non-listing of prices
-- non display of prices
-- Use of prices, premiums, lotteries
-- Selling below cost

Imitation of competitor's
-- Product
-- Trade Names
-- Slogans
-- Color Schemes
-- Adulteration (including dilution or substitution)

Misrepresentation in advertising as to -- Quality
-- Price
-- Guarantee

(A general paragraph or two giving some detailed information on items checked will be helpful).

IV

What methods of control provided by Codes of Fair Competition have been found most effective in meeting the problem of owner-operator competitions?

-- Registration
-- Display of compliance insignia
-- Certificates of compliance
-- Publication of registration number
-- Publicizing non-compliance
-- Minimum prices
-- Minimum standards of quality
-- Posting notices of insurance insurance
-- Prohibiting sales of services and materials to violators
-- Regulating shop opening & closing hours
-- Regulating hours of employers and members of Industry
-- Regulating compensation of employers and members of industry
-- Keeping books and records
-- Filing price lists
-- Requiring insurance
-- Inspection of records
-- Liquidated damages
-- Prohibition against purchase of non-labelled goods
-- Curtailing and eliminating homework
-- Establishing market or labor areas

(A general paragraph or two giving some detailed information on items checked will be helpful). Particular emphasis should be placed upon the degree of voluntary compliance with code provisions and experience with Code enforcement methods.

What methods of public regulation included in this group have been successfully employed in your area to regulate competition of one-man operators in your industry or trades?

-- Municipal licensing
-- Zoning regulations

STATE OR MUNICIPAL LEGISLATION COVERING:

-- employment of members of family
-- employment of individuals engaged in more than one occupation
-- insurance requirements
-- accident compensation
-- safety and health
-- inspection
-- filing of reports
-- emergency laws based on public interest, necessity and convenience
-- minimum requirements to engage in trade or vocation
-- examinations to determine proficiency
-- night work
-- working hours per day
-- working days per week
-- opening and closing hours

(A general paragraph or two giving some detailed information on items checked will be helpful).

What methods have been used to educate and control those engaged in this type of competition? (exclusive of Code controls and legislation)

-- Price stabilization agreements
-- Labor area agreements
-- Improved credit facilities & credit control
-- Study of individual mortality statistics (physical)
-- Study of business mortality statistics
-- Restircting sales below costs
-- Adoption of minimum quality standards
-- Buying up second hand equipment

(A general paragraph or two giving some detailed information on items checked will be helpful).

Have efforts been made to raise the levels of competition among owner-operators through

-- Trade associations
-- Trade unions
-- Cooperatives (purchasing)
-- Better Business Bureaus
-- Chambers of Commerce
-- Other Civic Organizations such as

Please indicate what degree of success was obtained through such efforts.

If unsuccessful in efforts to raise levels of competition, state why and give chief reasons for failure?

In addition to information furnished above, what general remarks, criticisms, and conclusions can you make with reference to the problem of the owner-operator in your industry insofar as it affected or affects labor standards and industrial stability prior to the Code period and during the NRA and what recommendations can you submit with respect to any possible future legislative or industrial activities in this regard?

APPENDIX A.

SELECTED SERVICE TRADES

Table 1. Distribution of Establishments by Proprietors and Employees, 1933.
Table 2. Distribution of Establishments by volume of receipts in 1933.
Table 3. Distribution of Total Receipts and Wages, 1933.
Table 4. Increase in establishments - 1929-1933.

TABLE I

SELECTED SERVICE TRADES

DISTRIBUTION OF ESTABLISHMENTS BY PROPRIETORS AND EMPLOYEES, 1933

INDUSTRY	Proprietors		
	No. of establishments	No. of proprietors	Proprietor per establishment
BARBERSHOP	117,832	128,709	1.09
CLEANING; PRESSING, ETC.	55,459	59,965	1.08
SHOE REBUILDING	50.425	52,781	1.59
BEAUTY SHOPS	42,073	45,807	1.09

SOURCE: Volume I, Services, Amusements & Hotels - Census of American Business, 1933, U. S. Dept. of Commerce, May, 1935.

TABLE I (Continued)

SELECTED SERVICE TRADES

DISTRIBUTION OF ESTABLISHMENTS BY PROPRIETORS AND EMPLOYEES, 1933

Employees				
No. of establishments	Average no. of fulltime employees	Average full-time employees per establishment	Average no. of part time employees	Average part time employees per establishment
117,832	71,347	.61	18.123	.15
55,459	28.274	.51	12,086	.22
50,425	12,876	.26	4,739	.09
42,073	42,735	1.02	8,955	.21

TABLE II

SELECTED SERVICE TRADES
DISTRIBUTION OF ESTABLISHMENTS BY VOLUME OF RECEIPTS IN 1933

(Receipts and Volume of Receipts Expressed in Thousands of Dollars)

INDUSTRY	Number of Estabs.	Receipts for 1933	Establishments Reporting Between $1,000 to $4,999				Establishments Reporting Less than $1,000			
			Establishments		Receipts		Establishments		Receipts	
			Number	% of total	Amount	% of total	Number	% of Total	Amount	% of total
Barber Shops	117,832	$204,387	69,121	58.7	$141,985	69.4	43,981	37.3	$25,989	12.7
Cleaning Pressing, etc.	55,459	135,611	32,743	59.0	73,590	54.3	16.616	29.96	9,398	6.9
Shoe Rebuilding	50,425	87,153	26,391	52.3	52.729	60.5	21,637	42.9	11,638	13.4
Beauty Shops	42.073	116,795	21,856	52.0	48,942	41.9	14,935	35.5	7,833	6.7

Source: Volume I, Services, Amusements & Hotels, Census of American Business, 1933: U. S. Department of Commerce, May, 1935

TABLE III

SELECTED SERVICE TRADES

DISTRIBUTION OF TOTAL RECEIPTS AND WAGES, 1933

Industry	Receipts (000)	Wages Full-Time Employees (000)	Wages Part-Time Employees (000)	All Other Operating Expense* (000)	Average Annual Earnings Per Full-Time Employee	Average Annual Earnings Per Part-Time Employee	Average Annual Net Earnings Per Proprietor
Barber Shop	$204,387	$52,070	$6,437	$63,679	$730.00	$355.00	$639.00
Cleaning, Pressing Etc.	135,611	21,244	5,027	56,686	751.00	416.00	939.00
Shoe Rebuilding	87,153	10,247	1,634	30,222	796.00	344.00	572.00
Beauty Shops	116,795	35,618	3,356	44,544	834.00	374.00	972.00

* Includes rent, interest, traveling expenses, advertising, taxes; insurance; light, heat, power and similar expenses. Cost of merchandise, as distinct from that of materials and supplies, is not included.

Source: Volume I - Services, Amusements and Hotels - Census of American Business, 1933, U. S. Department of Commerce, May, 1935.

TABLE IV

SELECTED SERVICE TRADES

INCREASE IN ESTABLISHMENTS - 1929-1933

Industry	Establishments				Percentage of Establishments			
	In Operation in 1933	In Operation in 1929 & 1933	Opened 1930-32	Opened 1933	In Operation in 1933	In Operation in 1929 & 1933	Opened 1930-32	Opened 1933
Barber Shop	117,832	80,796	27,059	9,977	100.0	68.5	23.0	8.5
Cleaning, Pressing, Etc.	55,459	34,965	14,688	5,806	100.0	63.0	26.5	10.5
Shoe Rebuilding	50,425	34,060	12,546	3,819	100.0	67.5	24.9	7.6
Beauty Shop	42,073	19,604	15,636	6,833	100.0	46.6	37.2	16.2

SOURCE: Volume I - Services, Amusement and Hotels, Census of American Business, 1933, U. S. Department of Commerce, May, 1935.

APPENDIX B.

COMMERCIAL TRUCKING INDUSTRY

Table 5. Percentage of total "for hire" trucking establishments registered by one-vehicle (owner-operator) enterprises in five western states.

Table 6. Percentage of total "for hire" trucking establishments registered by one-vehicle (owner-operator) enterprises in five eastern states.

TABLE 5

Commercial Trucking Industry

Percentage of Total "For-Hire" Trucking Establishments Registered by one-vehicle (Owner-Operator) Enterprises in Five Western States.

(100% = Total for each group)

TYPE OF CARRIER	PERCENTAGE OF TOTAL
Common Carrier	85.72
Commodity Carrier	90.91
Contract Carrier	84.40
Anywhere for Hire	88.53
Local Cartage	85.77
Mixed Type	59.96
All for Hire	85.23% or 19,740 enterprises.

SOURCE:

Record of Code Authority Registrations for States of Minnesota, Missouri, Iowa, Nebraska and Kansas.
Trucking Code History - Appendix.

TABLE 6

Commercial Trucking Industry

Percentage of Total "For Hire" Trucking Establishments Registered by one-vehicle (Owner-Operator) Enterprises in five Eastern States.

(100% = Total for each group)

TYPE OF CARRIER	PERCENTAGE OF TOTAL
Common Carrier	79.69
Commodity Carrier	84.02
Contract Carrier	78.18
Anywhere for Hire	87.99
Local Cartage	83.62
Mixed Type	54.67
All for Hire	80.31 or 43,397 Enterprises.

SOURCE:

Record of Code Authority Registrations, for States of New York, New Jersey, Pennsylvania, Ohio and Michigan. Trucking Code History - Appendix.

APPENDIX C

RETAIL TRADE INDUSTRY

Table 7. A comparison of Independent Retail Establishments with five or less employees with all other retail stores.

Table 8. Classification of Independent retail enterprises, showing ratio of establishments with five or less employees (including proprietor) to totals.

Table 9. Major divisions in retail trade which average less than five employees per establishment -- for the year 1929.

Table 10. Distribution of retail establishments by dollar volume.

TABLE VII

Retail Trade Industry

A Comparison of Independent Retail Establishments
with
Five or Less Employees with all Other Retail Stores

	TOTAL	Independents with five or less employes (including proprietors)	Independents with more than five employees (including proprietors)	All Chain Stores*
Stores	1,526,119 (100%)	1,287,438 (84.4%)	97,078	141,603
Proprietors	1,574,341	1,490,183 (94.7%)	60,288	3,670
Full-time employes	2,703,325	833,310 (30.8%)	1,184,808	685,207

* Local, sectional, national and manufactures -- controlled chains. These figures do not include central-office employees of chains, which would add the following:

Central-office executives	6,183
Central-office full-time employes	108,895
Central-office part-time employes (average number)	3,346

SOURCE OF INFORMATION:

Code History, Retail Trade. Based on special tabulations. Basis for computation as follows:

"The number of stores indicated as having five or less employees is based upon the proportions established by a tabulation of all independent store schedules from the 10 States of Arkansas, California, Georgia, Massachusetts, Missouri, Nebraska, New Jersey, North Carolina, Ohio and Oregon, aggregating 444,614 stores constituting 29.1 per cent of the 1,526,119 stores in the United States in 1933. To reduce the cost of tabulation, all independent stores with sales of less than $20,000 were assumed to have five or less employees and included in bulk. All stores with sales of more than $50,000 were assumed to have more than five employees (including proprietor) and were excluded in bulk. The tabulation cards representing all independent stores with sales between $20,000 and $50,000 were sorted on number of employees, using 50 man-months of full-time employment as the basis of segregating. All

the independent stores with less than 50 man-months of full-time employment were considered to have four or less full-time employees, or five including proprietor; all independent stores with 50 or more man-months of full-time employment were considered to have more than five full-time employees, including proprietor. The man-months of employment used in this connection do not represent the services of the proprietor.

All cards showing less than 50 man-months of full-time employment were tabulated by kinds of business to show the number of stores, number of proprietors and the number of full-time employees. These totals were added to the known total of those independent stores with sales volume of less than $20,000.

The ratios established by this tabulation, for the 10 representative states, were applied to the United States totals, classification by classification, to arrive at the projected totals shown above. The result was an indicated total of 1,287,438 independent stores with five or less employees.

Of the remaining 238,681 stores, representing independents with more than five employees and all chain stores regardless of the number of employees, the chain store was determined by the summary of chains contained in Table III, volume 6 of the Retail Census reports for 1933. The remaining stores were regarded as independents with more than five employees, including proprietors. No tabulation was made of part-time employees on a comparable basis."

TABLE VIII

Retail Trade Industry

CLASSIFICATION OF INDEPENDENT RETAIL ENTERPRISES, SHOWING RATIO OF ESTABLISHMENTS WITH FIVE OR LESS EMPLOYEES (INCLUDING PROPRIETOR) TO TOTALS
(According to kinds of business)

Kind of Business	100% = Total
Candy and Confectionery stores	97.0
Delicatessen stores	93.9
Fruit stores and vegetable markets	95.2
Meat markets	90.5
Bottled beer and liquor stores	96.2
Country-general stores	94.4
Custom Tailors	94.2
Motor vehicle and supply dealers	95.3
Garages and repair shops	96.8
Other automotive dealers	91.0
Radio stores	90.8
Electrical shops	92.0
Heating and Plumbing shops	90.3
Hardware stores	91.3
Restaurants	91.7
Lunch counters	94.9
Drinking places	99.2
Cigar stores and stands	90.3
Florist shops	95.3
Jewelry stores	92.7
Second-hand stores	95.8

The 10 classifications showing the smallest ratio of small independent stores with no more than 5 persons actively engaged, including proprietors are:

Department stores	(none)
Variety stores	53.5
Motor vehicle dealers	55.8
Lumber and building material dealers	59.6
Office and Store supply and equipment	60.8
Shoe stores	70.9
Newsdealers	71.7
Household appliance stores	72.6
Furniture stores	75.9
Filing stations	76.1

SOURCE: RETAIL CODE HISTORY -- Based on Census of Distribution special tabulation.

Note: A number of types of enterprises included above in retail category classified as service and food establishments under Code classifications.

TABLE IX

Retail Trade Industry

MAJOR DIVISIONS IN RETAIL TRADE WHICH AVERAGE LESS THAN FIVE EMPLOYEES PER ESTABLISHMENT FOR THE YEAR 1929.

Division	No. of Stores	Average No. Employees	F.T. Employees	Annual Sales
Specialty Stores	78,753	3.3	257,161	$3,269,015,672
Hardware and Farm Equipment	37,572	2.0	73,742	1,224,520,662
Jewelry store Divisions	19,998	1.9	38,273	536,280,697
General & Dry Goods Stores	128,765	1.2	156,561	3,212,139,002
Shoe Store Division	24,259	2.1	48,516	614,640,960
Tire, Battery & Accessories	22,313	2.3	50,886	599,295,161
Household Appliance & Fixt.	44,857	3.3	148,032	1,205,383,537
Booksellers	2,800	4.4	12,465	117,020,599
Music Dealers Division	6,486	4.0	25,732	279,220,564
Florists	9,328	2.5	22,964	176,200,880
Optical shops	3,001	1.7	5,014	49,999,873
Surgical Instruments	574	4.9	2,827	31,865,121

SOURCE: Retail Code History -- Based on Census of Distribution Special Tabulation.

TABLE X

Retail Trade Industry

DISTRIBUTION OF RETAIL ESTABLISHMENTS BY DOLLAR VOLUME

	Retailers	Number
A.	$500,000 and over	41,152
B.	200,000 to $500,000	35,048
C.	75,000 to $200,000	54,421
D.	35,000 to $75,000	80,888
E.	20,000 to $35,000	72,856
F.	10,000 to $20,000	123,782
G.	5,000 to $10,000	159,962
H.	3,000 to $5,000	147,873
I.	2,000 to $3,000	112,976
J.	1,000 to $2,000	125,041
K.	500 to $1,000	125,500
L.	Less than $500	429,121

SOURCE: Exhibit submitted by A. D. Whiteside, Division Administrator, in connection with report forewarded to the Administrator of the N.R.A. "Outstanding Impressions drawn from the General Retail and Retail Drug Trade Hearings, September 14, 1933.

APPENDIX D.

SELECTED FOOD INDUSTRIES

Table 11. Wage earners, salaried officers and employees in establishments with five or fewer employees (1933).

Table 12. Establishments of five or fewer employees - by wage earners and weekly earnings (1933) Selected States.

TABLE 11.

SELECTED FOOD INDUSTRIES

Wage Earners, Salaried Officers and Employees in Establishments with five or fewer employees (1933)

INDUSTRY	Size of establishment	Number of establishments	Salaried officers & Employees	Average total no. of wage earners
Beverages				
Non-Alcoholic	Total	2,903	3,374	15,123
	0 wage earners	105	19	---
	1-5 " "	2,100	1,416	5,411
Ice	Total	3,329	5,620	21,332
	0 wage earners	--	--	--
	1-5 " "	2,218	2,313	6,436
Baking & other baking products (Except biscuits & crackers	Total	14,483	14,149	155,229
	0 wage earners	453	13	--
	1-5 " "	9,325	2,052	24,859
Confectionery	Total	1,218	5,382	50,609
	0 wage earners	10	2	--
	1-5 " "	462	366	1,326

SOURCE: Special Tabulations from Census of Manufacturers - 1933

TABLE 12

FOOD INDUSTRIES - SELECTED STATES

Establishments of Five or Fewer Employees - by Wage Earners and Weekly Earnings (1933)

Industry and State	Establishments: Total	No. Employees	1 - 5 Employees	Per cent 5 or less employees of total	Total for all establishments	Wage Earners: Establishments 1 - 5 Employees: Total	Average per establishment	Percentage of total employees	Wages: Average for June '33 all establishments	Average per week June '33 establishments 1-5 Employees
Beverages										
Mass.	64	1	28	45	1,169	78	2.8	7	25.92	17.05
Ohio	85	0	47	55	706	147	3.1	21	26.67	30.17
N.C.	66	0	36	55	451	126	3.5	28	22.25	26.87
Bread & Bakery Wkrs										
Mass	153	0	47	31	5,002	168	3.6	3	23.61	19.00
Ohio	247	0	53	22	9,987	186	3.5	2	21.72	18.16
N.C.	26	0	3	12	569	13	4.3	2	18.83	12.62
Confectionery										
Mass.	56	0	13	23	4,418	35	2.7	1	15.27	15.34
Ohio	46	4	14	39	1,199	26	1.9	2	11.69	8.77
Flour & Grain Mills										
Ohio	77	0	38	49	1,015	116	3.1	12	21.04	16.09
N.C.	30	0	18	60	282	56	3.1	20	17.93	18.64
Meat Packing										
Mass.	37	0	6	16	3,543	18	3.0	1	25.13	23.17
Ohio	68	0	3	4	4,447	12	4.0	1	22.21	31.00

SOURCE: Special PRA Census - June 1933.

APPENDIX E.

GRAPHIC ARTS INDUSTRIES

Table 13. Wage earners, salaried officers and employees in establishments with five or fewer employees (1933).

Table 14. Establishments of five or fewer employees - by wage earners and weekly earnings (1933) Selected States.

TABLE 13

GRAPHIC ARTS INDUSTRIES

Wage earners, Salaried officers and Employees in 1933
Establishments with five or fewer employees 1933

INDUSTRY	Size of establishment	Number of establishments	Salaried officers & employees	Average total no. of wage earners
Print & Pub.				
Book Pub. & Print.	Total	73	1,663	4,387
	0-20 wage earners (*)	43	430	285
Print. & Pub.	Total	8,383	19,574	95,744
Job Printing	0 wage earners	301	61	-
	1-5 " "	4,942	2,899	13,392

(*) No breakdown available

9835

TABLE 14

GRAPHIC ARTS INDUSTRIES - SELECTED STATES

Establishments of Five or Fewer Employees - by Wage Earners and Weekly Earnings (1933)

Industry and State	Establishments				WAGE EARNERS			WAGES	
					Establishments 1-5 Employees			Average	Average per
	Total	No Employees	Employees	Per cent 5 or less employees of total	Total for all establishments	Average per establishment	Percentage of total employees	Average week June '33 establishments	Average per 1-5 employees
Print. & Publishing (Book & Job)									
Mass.	396	7	207	54.1	7,330	518	2.5	7.1	25.86	21.31
N. C.	58	0	34	58.6	569	88	3.6	15.5	21.05	15.48
Ohio	548	12	274	52.2	9,815	693	2.5	7.1	23.89	23.22
Print. & Publishing (Newspapers & Periodicals)									
Mass.	142	4	48	37	6,938	128	2.7	2	36.69	25.15
N. C.	63	0	35	55.5	1,048	102	2.9	9.7	24.47	18.68
Ohio	245	6	97	42	9,033	280	2.9	3	29.77	20.39

SOURCE: Special PRA Census - June 1933

APPENDIX F.

SELECTED MANUFACTURING INDUSTRIES

Table 15. Wage earners, salaried officers and employees in establishments with five or fewer employees (1933).

Table 16. Establishments of five or fewer employees - by wage earners and weekly earnings (1933) Selected States.

TABLE 15

SELECTED MANUFACTURING INDUSTRIES

Wage Earners, salaried officers and employees in Establishments with five or fewer employees - 1933.

INDUSTRY	Size of establishment	Number of establishments	Salaried officers & employees	Average total no. of wage earners
Jewelry	Total	779	2,405	13,069
	0 -5 wage earners	410	415	1,066
Fur	Total	1,463	1,572	8,210
	0 wage earners	48	20	--
	1-5 " "	964	466	2,413
Toys	Total	225	1,390	12,484
	0-5 wage earners	78	92	227
Embroideries Schiffili	Total	267	128	1,959
	0 wage earners	1)	-	-
	1-5 " "	168)	22	468

SOURCE: Special Tabulations from Census of Manufactures, 1933

TABLE 16

MANUFACTURING INDUSTRIES - SELECTED STATES

Establishments of Five or Fewer Employees - by Wage Earners and Weekly Earnings (1933)

Industry and State	Establishments: Total	Establishments: No Employees	Establishments: 1-5 Employees	Establishments: Per cent 5 or less of total employees	Wage Earners: Total for all establishments	Wage Earners: Establishments 1-5 Employees: Average per establishment	Wage Earners: Establishments 1-5 Employees: Percentage of total employees	Wages: Average for all establishments June '33	Wages: Average per week June '33 establishments 1-5 Employees
Clothing (Men's)									
Mass.	85	3	5	10	4,634	19	3.8	0	13.98	18.79
Ohio	60	0	9	15	10,073	29	3.2	0	13.72	18.03
Clothing (Women's)									
Mass.	126	9	17	21	6,801	51	3.0	1	15.01	17.59
Ohio	82	7	11	22	4,147	37	3.4	1	10.14	22.43
Soap									
Mass.	17	0	3	18	2,621	9	3.0	0	31.23	25.22
Ohio	23	0	6	26	4,226	12	2.0	0	27.51	29.75
Boots & Shoes (other than rubber)									
Mass.	253	12	5	6.7	38,948	15	3.0	0	18.36	19.87
Ohio	31	0	3	9.7	11,023	8	2.7	0.1	13.04	19.25
Leather									
Mass.	96	3	13	16	9,774	45	3.5	1	24.25	29.93
Electrical Machinery									
Mass	71	0	25	35	10,330	71	2.8	1	20.78	20.27
Ohio	133	0	33	25	17,512	109	3.3	1	21.04	18.41
Motor Vehicle, B & Pts.									
Mass.	27	0	5	19	802	15	3.0	2	23.40	24.28
Ohio	92	0	19	21	12,387	52	2.7	0	26.08	18.27
Fndry & Mach. Shops									
Mass.	169	3	52	32.6	8,081	143	3.6	1.8	27.24	22.73
Ohio	399	5	105	27.6	26,025	300	2.9	1.1	22.84	21.83
N.C.	29	0	7	24.2	386	24	3.4	6.2	17.64	14.88

SOURCE: Special PRA Census, June 1933

APPENDIX G

BUILDING CONSTRUCTION INDUSTRIES

Table 17. Tabulation of Trade Association information: San Francisco county - Nine principal specialty contracting industries.

Table 18. Establishments of five or fewer employees - by wage earners and weekly earnings (1933) Selected states.

TABLE 17
CONSTRUCTION INDUSTRY
TABULATION OF TRADE ASSOCIATION INFORMATION: SAN FRANCISCO COUNTY
NINE PRINCIPAL SPECIALTY CONTRACTING INDUSTRIES

CONTRACTING CLASSIFICATION	AFFILIATED WITH NAT'L. ASS'N.	S.F. ASS'N. ORGANIZED	NUMBER MEMBERS	NO. ACTIVE FIRMS (1)	ASS'N% ACTIVE FIRMS	FEB.1935 NUMBER FIRMS REGIST.	ASS'N% REGIST. FIRMS	NO.FIRMS CLASS.PHONE DIRECTORY MAY, 1935	ASS'N% OF NO. PHONE LISTINGS	% CLAIMED ASS'N (1) FIRMS OF TOTAL & VOLUME BUS.
1. Electrical	Yes	1915	126	140	90%	162	78.0%	41	131.0%	98. %
2. Heating & Piping	Yes	1925	24	28	86.0	55	44.0	13	195.0	95.0
3. Mason	No	1900	14	24	58.0	31	45.0	3	465.0	90.0
4. Painting	Yes	1900	65	600 (2)	14.0	446	19.0	105	81.0	85.0
5. Plastering & Lathing	No	1885	48	80	60.0	102	47.0	11	435.0	92.0
6. Plumbing	Yes	1885	85	175	48.5	143	59.0	119	72.0	99.0
7a Roofing	No	None				31		12		
7b Sheet Metal	No	1914	26	68	38.0	68	38.0	64	41.0	80.0
8. Tile	Yes	--	18	30	60.0	29	62.0	15	120.0	90.0
9. Wood Floor	No	None				44		15		

(1) Stated by association secretaries.

(2) Many unemployed journeymen doing jobs for selves.

TABULATION OF TRADE ASSOCIATION INFORMATION: SAN FRANCISCO COUNTY
NINE PRINCIPAL SPECIALTY CONTRACTING INDUSTRIES

"COMMENT: SPECIALTY CONTRACTING INDUSTRIES

Electrical Contracting: The distribution is very consistent throughout the state, registrations per 10,000 population being:

No. California	2.35
So. California	2.17
State of California	2.25

The radio business is a sustaining activity of most small firms. This and the appeal of the scientific nature of the business undoubtedly causes it to attract many high school graduates, and makes for the crowded condition of this industry as compared with most other specialty contracting lines. The need of advertising and the high average intelligence of those in the industry also makes for a high percentage of telephone listings.

The telephone listings of electrical contracting firms indicate the proportion of those equipped to do jobs of a substantial size, and are more in line with the numbers in other specialty contracting branches. These are:

No. California	0.46
So. California	0.18
State of California	0.29

Heating and Piping: Registrations per 10,000 show the influence of the warmer climate general in Southern California.

No. California	0.69
So. California	0.34
State of California	0.47

This industry, as well as Mason and Plastering Contracting, has principal contact with general contractors to whom they are known, rather than to the general public. This explains the relatively low proportion of telephone listings in these groups.

Mason Contracting: The registrations in the industry in Northern California are nearly 80% higher per capita than in the South. This is accounted for by the earlier development of the North, which took place when brick-work was common and reinforced concrete was unknown. This industry persists as a tradition though it is fighting a losing battle with concrete. The small number of brick-masons, the long period of apprenticeship required and their maintenance of high wage rates as against the high proportion of common labor utilized in the production of concrete work aggravates this industry.

Painting and Decorating: The ease with which journeymen in this trade can go into business for themselves, the numerous "clean-up" campaigns and the Federal Housing Administration's work with the consequent great number of small jobs causes this to show the greatest registration of all specialty contracting industries. The greater number of Northern Counties and the

"home industry" sentiment explain the considerably larger (47%) proportion of registration there. Direct contact with the public is indicated by the high proportion of telephone listings in this as well as in the Plumbing Contracting Industry.

Plastering and Lathing: The distribution of this industry is almost uniform throughout the larger counties.

Plumbing Contracting: The smaller proportion of registration in the North (83% of South) is caused by the early establishment of strict licensing and municipal supervision in the older cities of Alameda, Fresno, Sacramento and San Francisco counties, together with the early establishment of powerful trade associations.

Roofing and Sheet Metal: The distribution of this industry is almost exactly uniform throughout the state. This is probably the result of close watch on this business exercised by roofing material manufacturers. Contact with the public, large number of repair jobs and the F.H.A. campaign account for the high proportion of telephone listings.

Tile Contracting: The number of members of this industry is undoubtedly held down by an active and restrictive trade association, and the close cooperation of tile manufacturers therewith. The 40% higher relative registration in the South is caused by the enormously greater proportion of residence construction there since 1920 and by the popularity of the Mediterranean styles of architecture there.

TRADE ASSOCIATIONS: Data is presented for San Francisco County only (see page 11-A). This is the oldest large city and the most highly developed in the state. Therefore the development of associations found here will not be equalled in other communities.

It may be said that in the Electrical, Mason, Plumbing and Tile Contracting Industries only do the trade associations show adequate representation.

Electrical Contracting has a most active organization, which has made strenuous efforts to raise prices to a level that will support almost the same number of concerns that existed in 1929. Their mechanics have not been taken care of to the same extent, it being impossible with the reduced volume of available work. In March, 1935 the secretary of the Association reported that available volume of work was only 26% of that in 1929. Unit prices were nearly doubled.

Mason Contracting: The strongly organized character of the labor in this industry is necessarily reflected in the employing group. For many years wage agreements have been entered into and adhered to. Brick manufacturers strongly encourage the maintenance of the trade association, cooperating in an endeavor to promote the use of this material.

Plumbing Contracting: The registrations in this industry in San Francisco have remained stationery for the past year, by contrast with considerable increases in other lines. The 50-year old trade association and close supervision and strict licensing by the Department of Health explain this situation.

Tile Contracting: This industry has a very powerful trade association, as referred to above. It is monopolistic in tendency and constantly endeavors to maintain fairly high prices.

TABLE 18

BUILDING CONSTRUCTION - SELECTED STATES (1933)

Establishments of Five or Fewer Employees - by Wage Earners and Weekly Earnings

Industry and State	Establishments					WAGE EARNERS			WAGES	
						Establishments 1-5 employees				
	Total	No. of Employees	1 - 5 Employees	Per cent 5 or less employees of total	Total for all establishments	Total	Average Per establishment	% of total employees	Average for June '33 all establishments	Average per week June '33 establishments 1-5 employees
Bldg. & Construction Mass.	1,006	58	614	67	6,634	1,583	2.6	24	$27.07	$26.79
Ohio	1,091	117	678	72	6,540	1,658	2.4	25	21.88	22.48
North Carolina	99	3	58	62	829	188	3.2	23	13.57	15.47

SOURCE: Special PRA Census, June 1933.

APPENDIX H.

(Citation of Police Power of State)

Francis Barbier, Pltff. in Error
V.
Patrick Connolly (113 U. S. 27)

City Ordinance - validity of - power of federal tribunal - police power of State.

FRANCIS BARBIER, Plff. in Err.,

v.

PATRICK CONNOLLY,

(113 U.S. 27)

(See S. C., Reporter's ed., 27-32.)

City ordinance - validity of - power of federal tribunal - police power of State.

1. The ordinance of the City and County of San Francisco, prohibiting the carrying on of public laundries and wash houses within certain prescribed limits of the city and county, from ten o'clock at night until six o'clock in the morning, is purely a police regulation within the competency of any municipality, possessed of the ordinary powers, to make.

2. A federal tribunal cannot supervise such regulations; any correction of the action of municipal bodies in such matters can come only from state legislation or state tribunals.

3. The 14th Amendment of the U. S. Constitution is not designed to interfere with the power of the State, sometimes termed its "police power," to prescribe regulations to promote the health, peace, morals, education and good order of the people

(No. 871)

Submitted Nov. 25, 1884. Decided Jan. 5, 1885.

In Error to the Superior Court of the City and County of San Francisco, State of California.

The history and facts appear in the following:

Statement of the case by Mr. Justice Field:

On the 8th of April, 1884, The Board of Supervisors of the City and County of San Francisco, the legislative authority of that municipality, passed an ordinance reciting that the indiscriminate establishment of public laundries and wash houses, where clothes and other articles were cleansed for hire, endangered the public health and the public safety,

prejudiced the well being and comfort of the community and depreciated the value of property in their neighborhood; and then ordaining, pursuant to authority alleged to be vested in the Board under provisions of the State Constitution and of the Act of April 19, 1856, consolidating the government of the city and county, that after its passage it should be unlawful for any person to establish, maintain or carry on the business of a public laundry or of a public wash house within certain designated limits of the city and county, without first having obtained a certificate, signed by the health officer of the municipality, that the premises were properly and sufficiently drained, and that all proper arrangements were made to carry on the business without injury to the sanitary condition of the neighborhood; also a certificate, signed by the board of fire wardens of the municipality, that the stoves, washing and drying apparatus and the appliances for heating smoothing irons, were in good condition and that their use was not dangerous to the surrounding property from fire, and that all proper precautions were taken to comply with the provisions of the ordinance defining the fire limits of the city and county, and making regulations concerning the erection and use of buildings therein.

The ordinance requires the health officer and board of fire wardens, upon application of anyone to open or conduct the business of a public laundry, to inspect the premises in which it is proposed to carry on the business, in order to ascertain whether they are provided with proper drainage and sanitary appliances and whether the provisions of the fire ordinance have complied with; and, if found satisfactory, in all respects, to issue to the applicant the required certificates without charge for the services rendered. Its 4th section declares that no person owning or employed in a public laundry or a public wash house within the prescribed limits shall wash or iron clothes between the hours of ten in the evening or six in the morning or upon any portion of Sunday; and its 5th section, that no person engaged in the laundry business within those limits shall permit anyone suffering from an infectious or contagious disease to lodge, sleep or remain upon the premises. The violation of any of these several provisions is declared to be a misdemeanor, and penalties are prescribed differing in degree according to the nature of the offense. The establishing, maintaining or carrying on the business, without obtaining the certificates, is punishable by fine of not more than $1,000, or by imprisonment of not more than six months, or by both. Carrying on the business outside of the hours prescribed, or permitting persons with contagious diseases on the premises, is punishable by fine of not less than $5 or more than $50, or by imprisonment of not more than one month, or by both such fine and imprisonment.

The petitioner in the court below, the plaintiff in error here, was convicted in the Police Judge's Court of the City and County of San Francisco, under the 4th section of the ordinance, of washing and ironing clothes in a public laundry, within the prescribed limits, between the hours of ten o'clock in the evening of May 1, 1884, and six o'clock in the morning of the following day, and was sentenced to imprisonment in the county jail for five days, and was accordingly committed, in execution of the sentence, to the custody of the city and county, who was keeper of the county jail. That court had jurisdiction to try him for the

alleged offense, if the ordinance was valid and binding. But, alleging that his arrest and imprisonment were illegal, he obtained from the Superior Court of the city and county a writ of habaes corpus, in obedience to which his body was brought before the court by the sheriff, who returned that he was held under the commitment of the police Judge upon a conviction of a misdemeanor, the commitment and sentence being produced.

The petitioner thereupon moved for his discharge, on the ground that the 4th section of the ordinance violates the 14th Amendment to the Constitution of the United States, and certain sections of the Constitution of the State. The particulars stated in which such alleged violations consist were substantially these, omitting the repetition of the same position: that the section discriminates between the class of laborers engaged in the laundry business and those engaged in other kinds of business; that it discriminates between laborers beyond the designated limits and those within them; that it deprives the petitioner of the right to labor and, as a necessary consequence, of the right to acquire property; that it is not within the power of the Board of Supervisors of the City and County of San Francisco; and that it is unreasonable in its requirements. The Superior Court overruled the positions and dismissed the writ, and the petitioner brought this writ of error.

Mr. A. C. Searle, for plaintiff in error.

Messrs. H. G. Sieberst and Alfred Clarke, for defendant in error.

Mr. Justice Field delivered the opinion of the court:

In this case we can only consider whether the 4th section of the ordinance of the City and County of San Francisco is in conflict with the Constitution or laws of the United States. We cannot pass upon the conformity of that section with the requirements of the Constitution of the State. Our jurisdiction is confined to a consideration of the federal question involved, which arises upon an alleged conflict of the 4th section in question with the 1st section of the 14th Amendment of the Constitution of the United States. No other part of the Amendment has any possible application.

That 4th section, so far as it is involved in the case before the police Judge, was simply a prohibition to carry on the washing and ironing of clothes in public laundries and wash houses, within certain prescribed limits of the city and county, from ten o'clock at night until six o'clock on the morning of the following day. The prohibition against labor on Sunday is not involved. The provision is purely a police regulation within the competency of any municipality possessed of the ordinary powers belonging to such bodies. And it would be an extraordinary usurpation of the authority of a municipality if a federal tribunal should undertake to supervise such regulations. It may be a necessary measure of precaution in a city composed largely of wooden buildings like San Francisco, that occupations, in which fires are constantly required, should cease after certain hours at night until the following morning; and of the necessity of such regulations the municipal bodies are the exclusive judges; at least any correction of their action in such matters can come only from state legislation or state tribunals.

The same municipal authority which directs the cessation of labor must necessarily prescribe the limits within which it shall be enforced, as it does the limits in a city within which wooden buildings cannot be constructed. There is no invidious discrimination against anyone within the prescribed limits by such regulations. There is none in the regulation under consideration. The specification of the limits within which the business cannot be carried on without the certificates of the health officer and board of fire wardens is merely a designation of the portion of the city in which the precautionary measures against fire and to secure proper drainage must be taken for the public health and safety. It is not legislation discriminating against any one. All persons engaged in the same business within it are treated alike; are subject to the same restrictions and are entitled to the same privileges under similar conditions.

The 14th Amendment, in declaring that no State "Shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoilation of property but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one that such as is prescribed to all for like offenses. But neither the Amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the State, sometimes termed its "police power," to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity. From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits, for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon anyone, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the Amendment.

In the execution of admitted powers unnecessary proceedings are often required which are cumbersome, dilatory and expensive, yet, if no discrimination against anyone be made and no substantial right be impaired by them, they are not obnoxious to any constitutional objection. The inconveniences arising in the administration of the laws from this cause are matters entirely for the consideration of the State; they can be remedied only by the State. In the case before us, the provisions requiring certificates from the health officer and the board of fire wardens may, in some instances, be unnecessary, and the changes to be made to meet the conditions prescribed may be burdensome, but as we have said, this is a matter for the determination of the municipality in the execution of its police powers, and not a violation of any substantial right of the individual.

Judgment affirmed.

APPENDIX I.

TABULATION OF OWNER-OPERATOR CODE CONTROL DEVICES

Listing of N. R. A. Code control clauses affecting maximum hours of owner--operators.

Listing of N. R. A. Code control clauses affecting compensation of owner--operators.

N. R. A. CODE PROVISIONS CONTROLLING OWNER-OPERATORS' WORKING HOURS

CODE NUMBER	INDUSTRY	A — PROVISIONS CONTROLLING OWNER-OPERATORS' ACTUAL WORKING HOURS AS WORKERS		B — PROVISIONS FOR STARTING AND FINISHING PERIODS			C — PROVISIONS DESIGNED TO PREVENT SUBTERFUGE							
							THE FOLLOWING WHILE AT WORK AS PRODUCTIVE EMPLOYEES ARE SUBJECT TO MAXIMUM CODE HOURS							
		EMPLOYERS DOING WORK OF EMPLOYEES ARE SUBJECT TO CODE CONTROL PROVISIONS AS TO HOURS OF LABOR	EMPLOYERS PERFORMING MANUAL WORK OR ENGAGED IN MECHANICAL OPERATIONS MAY NOT EXCEED EMPLOYEES' MAXIMUM HOURS	LIMITATIONS ON EMPLOYEES' WORKING TIME	EMPLOYEES MAY NOT WORK ON CERTAIN DAYS	CODE AUTHORITY MAY ESTABLISH: (1) STARTING AND FINISHING HOURS AND/OR (2) CLOSING DAYS PER WEEK	OFFICERS	ALL MEMBERS OF A PARTNERSHIP	ALL MEMBERS OF A PARTNERSHIP BUT ONE	STOCKHOLDERS	MEMBERS OF COOPERATIVES	MEMBERS OF THE INDUSTRY	OWNERS	FAMILIES OF OWNERS
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
5	Coat & Suit	x		5 days-8:30 to 4:30										
29	Art. Flower & Feather					x						x		
41	Womens' Belt					x								
43	Ice Mfg.							x		x			x	
51	Umbrella						x	x					x	
60	Retail Trade							x*					x*	x*
60-A	Booksellers							x*					x*	x*
60-C	Ret:Custom Millinery							x*					x*	x*
112	All Metal Insect Screen		x											
130	Precious Jewelry		x					x		x			x	
133	Concrete Masonry		x											
147	Motor Vehicls Storage	x						x						
151	Millinery					x		x		x				
156	Rubber Mfg.(Rainwear)	x		5 days	Sat. & Sun.									
161	Fur Dressing Dyeing							x		x		x		
162	Domestic Freight Forw	x					x	x		x				
164	Knitted Outerwear						x	x		x		x		
175	Med & Low Priced Jewelry	x					x	x		x			x	
177	Silverware Mfg.		(Employers Working as Producers) x											
179	Electrotyping		x											
181	Commercial Refrigerator						x	x		x			x	
182	Ret Food & Grocsry						x*	x*			x*	x*		
185	Concrete Pipe Mfg.		x											
194	Blouse & Skirt Mfg.		x			x								
201	Charcoal & Pkg Fuel	x												
206	Feldspar		x											
207	Ball Clay Products	x												

* Limits hours of owner-operators by fixing ratio between those unrestricted and numbers of workers in each establishment.

		A		B			C							
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
208	Picture Molding & Frame								x					
217	Dental Laboratory			7 AM to 7 PM	Sat. PM Sunday	x								
219	B edding Mfg	x												
234	Macaroni	x												
244S	Painting		x											
244F	Electrical Contrg.		x											
244G	Mason Contractors		x											
244H	Roofing, Sheet Metal		x											
244J	Resilient Flooring		x											
244K	Wood Flooring Contr's		x											
244L	Insulation Contr.		x											
244M	Kalamein		x											
244N	Plastering		x											
244O	Terrazzo		x											
244P	Heating, Piping		x											
244R	B uilding Granite		x											
244S	Construction News Serv.		x											
244T	Stone Setting Cont.		x											
244A	Sub.1,Highway Cont.		x											
244I	Plumbing Contractor	x												
253	Animal Soft Hair			8AM to 5:30 PM			x	x				x	x	
256	Schiffili			8-5 Mon. thru Fri.		x(Sectl)	x	x		x	x	x		
260	Ornamental Molding								x					
263	Machine Knife		x											
267	Used Textile Bag								x					x
274	Saw & Steel Prod.		x											
276	Pleating, Stitching			8:45-4:45Mon thru Thur.										
280	Retail Solid Fuel							x		x			x	
281	Laundry Trade	x(Based on Ratio)		6AM to 10 PM	Sunday									
282	Restaurant		x				x*	x*			x*	x*		
283	Ready Made Furn Sl Cover											x		
286	Beauty,Barb.Shop Equip.		x											
287	Graphic Arts (Rel.Print)		x											
"	" " Lithographic		x											
"	" (Trade Mounting)		x											
"	" (Intaglio Printing)		x											
307	Stay Manufacturing						x	x				x	x	
310	Fresh Water Frl Button	x												
311	Ready Mixed Concrete		x											
318	Wrecking & Salvage		x											
320	Hide & Leather Wrk Mach		x											
322	Earthenware Mfg		x											
324	Textile Print Roller Engr.	x		7AM-7:30PM(5 days)										

* Based on ratio between unrestricted persons and number of employees in each establishment

		A		B		C							
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
362	Photographic & Photo Finishing	x												
327	Machine applied Staple		x					x					x	
330	Scrap Iron													x
330A	Waste Paper													x
332	Ladies Handbag					x								
333	Canvas Bag								x					
334	Beverage Dispensing		x											
335	Art Needlework											x		
336	Covered B utton	x		5 days		x								
338	Wooden Insulation Pin											x		
341	Fibre & Metal Work	x												
345	Collapsible Tube	x												
349	Mayonnaise													x
358	Cylinder Mould		x											
363	Mens' Neckwear	x												
367	Metal Treating	x												
368	Print Roller, etc.	x		8-5PM 5 days										
381	Fur Dealing**	x		5 days										
387	Shoe Machinery		x											
388	Sandstone		x											
397	Spray Painting		x											
398	B arber Shop Trade	x				x								
400	Celluloid Button, etc.				Sat. Sun.	x								
402	Sewing Machine		x											
408	Undergarment	x				x								
411	Bank & Sec. Vault		x											
414	Bobbin & Spool		x											
419	Soft Lime Rock		x											
423	Drop Forging	x												
427	Curled Hair Mfg		x(Emplyrs as Prodcrs)											
435	Shower Door		x											
436	Fur Mfg	x		8:30-4:30 5das	Sat. Sun.									
445	Baking Industry							x		x				x***
446	Canning													x

** Rabbit Division only.
*** Other than husband or wife

1	2	A 3	A 4	A 5	B 6	B 7	C 8	C 9	C 10	C 11	C 12	C 13	C 14	C 15
449	Whsle Mont. Granite		x											
456	Ice Cream Cone							x		x				x*
457	Cap & Cloth Hat	x			Sat. & Sun.	x						x		
458	Whlse Confectioners				Sun.			x		x		x		x*
440	Dowel Pin Mfg	x												
466	Retail Tobacco													x**
471	Trailer Mfg	x												
476	Hatters Fur Cutting	x												
486	Comm. Vehicle Body	x						x						
488	Welt Mfg						x	x					x	
489	Safety Razor & Blade		x											
494	Merchants Custom Tlring	x		8 - 5	Sunday									
503	Pretzel							x		x			x	x*
505	Blackboard & Eraser		x											
510	Assembled Watch						x					x		
511	Cor. Rolled Metal Pipe		x											
516	Flavoring Products							x		x		x		x*
518	Shuttle Mfg		x											
519	Nat'l Cleft Stone	x												
527	Metal Hospital Furn.		x											
530	Bit. Rd. Mat'l Distr.		x											
531	Stained & Lead Glass		(Emplyr as skld craftsmn)											
534	Horse Hair Dressing		(Emplyr as prodcr)											
537	Blue Print & Photo Print	x												
543	Motor Vehicle Maintenance	x												
544	Auto Rebuilding	x												
545	Natural Organic Prod.		x											
546	Pac. Coast Dried Fruit													x

*Other than husband or wife
** Minors or members of family

N. R. A. CODE PROVISIONS RELATING TO WAGES OR OTHER COMPENSATION FOR OWNER-OPERATORS AND MEMBERS OF THEIR FAMILIES

Code No.	Industry	Employers and *Members of the Industry who do work of employes are subject to Code wage provisions	Relatives or Members of Employers' families doing work of employes are subject to Code wage provisions	Relatives other than husband or wife while doing work of employes are subject to Code wage provisions	Working partners, stockholders & others having proprietory interest are bound by Code wage provisions	Wages of Members of Industries who perform work of employees shall be included in Cost Accounting
219	Bedding Mfg.	X				
234	Macaroni	X				
244-I	Plumbing Contractors	X				
244-P	Heating - Piping	X				
330	Scrap Iron, Non-Ferrous Scrap Metals		X			
330-A	Waste Paper		X			
349	Mayonnaise		X			
445	Baking			X	X	
446	Canning		X			
456	Ice Cream Cone			X	X	
458	Wholesale Confectionery			X	X	
503	Pretzel Industry			X	X	
516	Flavoring Products			X	X	
546	Pacific Coast Dried Fruit		X			
333	Canvas			X(one member of family exempt)		
513	Commercial Aviation					X
(84 (Sup. 48	Perforating Mfg.					X

*Members of Industry - includes employers and those engaged on own behalf.

APPENDIX J.

N. R. A. LEGAL RESEARCH MEMORANDUM #175

Memorandum of Law concerning hours of labor restrictions upon individual entrepreneur.

MEMORANDUM OF LAW CONCERNING HOURS OF LABOR RESTRICTIONS

UPON INDIVIDUAL ENTERPRENEUR

#175
N.R.A.
Legal Research
August 18, 1934

N.R.A.
Legal Research

Saturday,
August 18, 1935

MEMORANDUM OF LAW CONCERNING HOURS OF LABOR RESTRICTIONS UPON INDIVIDUAL ENTERPRENEUR

Statement of Facts

A code of fair competition says that the hours of labor provisions apply to members of the industry who do their own work without the assistance of employees.

The first part of the second paragraph of Section 5 of the National Industrial Recovery Act is as follows:

> "Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; . . ."

Question

May an individual enterpreneur, doing his own work, work longer hours than prescribed by the code? Or does Section 5 of the National Industrial Recovery Act prohibit such enforcement against him?

Discussion

By construing the work prevent in the foregoing section of the N.I.R.A. some of the difficulty presented by this problem will be eliminated. The following definitions of that word show that prevent is substantially the same as prohibit; therefore if the entrepreneur here is allowed to work at all he is, of course, not prohibited from "pursuing the vocation of manual labor", and the next question to arise the propriety of limiting his hours of labor at all:

> "Prevent. 1. To come or go before; to precede; to be beforehand with; to anticipate; to forestall. Obs. or Archaic.
>
> 2. To intercept; hinder; impede; keep (from); frustrate; stop; check; thwart; to keep from happening or existing; --often followed by from; as, to prevent one from coming." Webster's New International Dictionary (1919).

"Prevent. To hinder, impede, or preclude; to obstruct; to intercept." Black's law Dictionary, 3d ed. 1933.

"Prevent. To hinder; to obstruct; to intercept." Bouvier, Law Dictionary, Rawle's 3rd Revision, 1914.

"'Prevent,' as used in Acts 1878-9, p. 413, conferring power on the municipal authorities of a city to prevent the selling of spirituous, vinous, or malt liquors within the corporate limits whenever they may deem it expedient, is synonymous with 'prohibit': The difference between 'prevent' and 'prohibit' is not material. If there is any difference, 'prevent' is the stronger work--conveying the idea of prohibition, and the use of the means necessary to give it effect.

"In re Jones, 78 Ala. 419, 421." 6 Words & Phrases (1904).

Since the meaning of prevent as applied in In re Jones, supra, is in reference to the preventing of one engaging in a certain kind of business, the meaning here is preferred to other possible meanings because the problem in the Alabama Case is somewhat similar to the question here pursued. This case is thought to be the only one even approaching our facts.

But this defining of the word prevent does not satisfactorily answer things. Unless we can assume that hours of labor provisions applying to ordinary wage earners must also apply to an entrepreneur who does his own work, cases upholding such labor provisions are not controlling. The wage earner has only his right to labor to be considered, but this manager-laborer has his business interests to be considered as well.

Apparently the only substantial injury which would result to this entrepreneur because of curtailing his hours of labor is that the productive capacity of his business would be regulated to his detriment. Therefore, the closes cases to the situation here involved are those concerning the propriety of limiting the production of a business unit.

One line of cases upholds the limitation of the production of oil and natural gas, but in so far as they rely upon the prevention of waste of a natural resource they are not particularly helpful. In this respect see:

Ohio Oil Co. v. Indiana, 177 U. S. 190, 20 S. C. 576 (1900);
Commonwealth v. Trent, 117 Ky. 34, 77 S. W. 390 (1903);
Bardini Petroleum Co. v. Superior Court, 284 U. S. 8, 52 Sup. Ct. 103 (1931);
People ex rel. Stevenant v. Associated Oil Co., 221 Cal. 93, 294 Pac. 717 (1930);
Julian v. Copshaw, 145 Okla. 237, 292 Pac. 841 (1930).

Other cases approving acts of Congress, state statutes, or a city ordinance dealing with limitation of production are:

Starring v.Frazier, 4 Fed. Supp. 818, D. Ct. Tenn (1933) (Machine hours in Underwear and Allied Products Manufacturing Industry);
Nebbia v.New York, 291 U.S. 502 (1934) (State statute, milk prices more than production):
Lindsey v.Carbonic Gas Co., 220 U.S. 61, 31 Sup. Ct. 337 (1911) (Waste of natural gas, state statute);
West, Attorney General of the State of Oklahoma v.Kansas Natural Gas Co., 221 U.S. 229, 31 Sup. Ct. 564 (1911) (Natural gas, state statute);
Wallas v.Carbon Co., 254 U.S. 300, 41 Sup. Ct. 118 (1920) (Natural Gas, state statute);
Champlin Refining Co. v.Corporation Commission of Oklahoma, 286 U.S. 210, 52 Sup. Ct. 559 (1932) (Petroleum waste, state statute);
Mars v.Oxford, 32 Fed. (2d) 134 (C.C.A.8th, 1929) (cert. den. in 280 U.S. 563, 59 Sup. Ct. 24 (1929)) (Oil production, city ordinance).

The following cases disapprove state statutes on control of production:

William v.Standard Oil, 278 U.S.235, 49 Sup.Ct.115 (1929) (Gasoline prices more than production);
New State Ice Co. v.Liebman,285 U.S. 262, 52 Sup. Ct. 371 (1932) (Production of ice).

In Starring v.Frazier,supra, a dyer was discharged because the Code of Fair Competition for the Underwear and Allied Products Manufacturing Industry limited the machine hours of sewing machines and knitting machines, thereby reducing the amount of work of his employer. The court refused him injunctive relief from the operation of the code in bringing about such discharge because of the remoteness of the injury involved. Therefore, this case only impliedly upholds the code provisions limiting production.

Other cases concerning the control of production have risen under the National Industrial Recovery Act. In Willamette Valley Lumber Co. v.Watzek et.al., D.C. Ore., Jan 24, 1934 (see page 150 of Legal Research Bulletin 27) plaintiff was denied an increase in his alloted quota of production of lumber under the code even though he was under contract for delivering electric energy by-products from which he would derive large revenues. (For a discussion of this case see note in 43 Yale Law Journal 827).

In Ryan et al. v.Amazon Petroleum Corporation et al.,C.C.A. 5th, 1934 (see page 151 of Bulletin 27, supra), the plaintiff sought to enjoin the enforcement of Section 9 (c) of the N.I.R.A., which prohibited the production or withdrawal from storage of oil in excess of amounts allowed under state laws. The court assumed the regulation of oil production of the state to be valid and upheld the cooperation of federal and

state action. The court denied the injunction and approved regulations pursuant to Section 10 (a) of the Act which provided for inspection of books and monthly statements in order to follow the interstate flow of oil.

In Richmond Hosiery Mills v. Camp, D.C. N.D. Ga., Eq. No. 758, May 18, 1934 (see page 153 of Bulletin 27, supra), the complainant was denied an injunction to restrain enforcement of a provision in the Hosiery Code which restricted the hours of operation of productive machinery. The court considered that the means adopted by the code were not unreasonable, arbitrary or capricious, and that the means selected had a reasonable relation to the end desired. The production curtailment was upheld as a valid effort to eliminate unfair competition.

The following cases were where convictions were obtained upon guilty pleas for violation of code provisions designed to limit production:

United States v. Allied Dye and Print Works, Inc., D.C.D.,N.J., April, 1934 (see page 150 of Bulletin 27, supra) (Operation of machinery in excess of time approved by the Code of Fair Competition for the Rayon Silk Dyeing and Printing Code);

United States v. Radiance Piece Dye Works, Inc., D.C.D.,N.J., April 27, 1934 (see page 150 of Bulletin 27, supra) (Same code provisions as in the Allied Dye and Print Works Case, supra);

United States v. Greenville Finishing Co., D.C.D.R.I., April, 1934 (see page 151 of Bulletin 27, supra) (Violation of machine hours limitation of the Cotton Textile Code).

However, limitation of production has not always been upheld. In Edgewater Dairy Co. et al. v. Wallace et al., D.C.N.D.Ill., Eq. No. 13878, June 26, 1934 (see page 801 of Bulletin 27, supra), a milk license for the Chicago area issued pursuant to the A.A.A. was held to be void as an attempt to regulate production which neither constituted nor affected interstate commerce. Of course, this case does not necessarily stand as opposed to the validity of production control since the problem might have been given further consideration had the interstate commerce features of the case been clear. (See also United States v. Smith et al., D.C. E.D. Tex., Feb. 26, 1934 (see page 152 of Bulletin 27, supra), for a case under the Petroleum Code where production quotas are unconstitutional because not authorized by the Act.)

Conclusion

An individual enterpreneur cannot be stopped from doing his own work by the provisions of a code. However, of a code applying to the industry in which he is engaged prescribes the number of hours for its workers, he probably cannot lawfully work more than the prescribed number of hours. At least code provisions limiting the number of hours which one may work can be enforced against him if there is no unlawful control of the production of his business. It is believed that production control, especially in emergency, is constitutional.

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EAK:FC
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APPENDIX K.

TABULATION OF VIOLATION DATA - OWNER-OPERATOR CONTROL PROVISIONS

Table 19. Listing of violations of code control clauses affecting hours of owner operators.

Table 20. Listing of code control clauses affecting hours of owner operators in selected industries.

TABLE #19

LISTING OF VIOLATIONS OF CODE CONTROL CLAUSES AFFECTING HOURS OF OWNER OPERATORS.

TYPE OF VIOLATION	TOTAL NO. OF CASES	NO. ADJUSTED	NO. DROPPED	PENDING
Employer working more than code maximum where prohibited.....	391	312	66	13
Exceeding permitted number of persons working unlimited hours.....	86	77	6	3
Working during hours of the day not permitted by code.	218	142	61	15
	695	531	133	31

SOURCE:

Tabulations of
N. R. A. State Office Complaint Statistics.
(Violations of Labor Provisions)
Compiled by Statistical Section, Field Division - NRA.

TABLE #20

LISTING OF VIOLATIONS OF CODE CONTROL CLAUSES AFFECTING HOURS OF OWNER OPERATORS IN SELECTED INDUSTRIES

CODE NO.	INDUSTRY	TOTAL NO. OF CASES	ADJUSTED	NO VIOLATIONS	DROPPED
445	Baking	12	8	4	
398	Barber Shop Trade	135	50	65	20
217	Dental Laboratory	16	10	5	1
	Pleating, Stitching & Bonnaz, etc.	4	1	1	2
280	Retail Solid Fuel	5		5	
256	Schiffili, Hand Machine Embrodery	7	1	3	3
	Totals	179	70	83	26

OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION
THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

> The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I hereby appoint Leon C. Marshall, Director of the Division of Review.

The study sections set up in the Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, miscellaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority. the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code, and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No 18, Contents of Code Histries, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

set forth the origination of the code, the sponsoring group, the evidence advanced to support the proposal, the report of the Division of Research and Planning on the industry, the recommendations of the various Advisory Boards, certain types of official correspondence, the transcript of the formal hearing, and other pertinent matter. There is also much official information relating to amendments, interpretations, exemptions, and other rulings. The materials mentioned in this paragraph were of course not a part of the work of the Division of Review.)

THE WORK MATERIALS SERIES

In the work of the Division of Review a considerable number of studies and compilations of data (other than those noted below in the Evidence Studies Series and the Statistical Material Series) have been made. These are listed below, grouped according to the character of the material. (In Work Materials No. 17, Tentative Outlines and Summaries of Studies in Process, these materials are fully described).

Industry Studies

Automobile Industry, An Economic Survey of
Bituminous Coal Industry under Free Competition and Code Regulation, Economic Survey of
Electrical Manufacturing Industry, The
Fertilizer Industry, The
Fishery Industry and the Fishery Codes
Fishermen and Fishing Craft, Earnings of
Foreign Trade under the National Industrial Recovery Act
  Part A - Competitive Position of the United States in International Trade 1927-29 through 1934.
  Part B - Section 3 (e) of NIRA and its administration.
  Part C - Imports and Importing under NRA Codes.
  Part D - Exports and Exporting under NRA Codes.
Forest Products Industries, Foreign Trade Study of the
Iron and Steel Industry, The
Knitting Industries, The
Leather and Shoe Industries, The
Lumber and Timber Products Industry, Economic Problems of the
Men's Clothing Industry, The
Millinery Industry, The
Motion Picture Industry, The
Migration of Industry, The: The Shift of Twenty-Five Needle Trades From New York State, 1926 to 1934
National Labor Income by Months, 1929-35
Paper Industry, The
Production, Prices, Employment and Payrolls in Industry, Agriculture and Railway Transportation, January 1923, to date
Retail Trades Study, The
Rubber Industry Study, The
Textile Industry in the United Kingdom, France, Germany, Italy, and Japan
Textile Yarns and Fabrics
Tobacco Industry, The
Wholesale Trades Study, The
Women's Neckwear and Scarf Industry, Financial and Labor Data on

Women's Apparel Industry, Some Aspects of the

Trade Practice Studies

Commodities, Information Concerning: A Study of NRA and Related Experiences in Control
Distribution, Manufacturers' Control of: Trade Practice Provisions in Selected NRA Codes
Distributive Relations in the Asbestos Industry
Design Piracy: The Problem and Its Treatment Under NRA Codes
Electrical Mfg. Industry: Price Filing Study
Fertilizer Industry: Price Filing Study
Geographical Price Relations Under Codes of Fair Competition, Control of
Minimum Price Regulation Under Codes of Fair Competition
Multiple Basing Point System in the Lime Industry: Operation of the
Price Control in the Coffee Industry
Price Filing Under NRA Codes
Production Control in the Ice Industry
Production Control, Case Studies in
Resale Price Maintenance Legislation in the United States
Retail Price Cutting, Restriction of, with special Emphasis on The Drug Industry.
Trade Practice Rules of The Federal Trade Commission (1914-1936): A classification for comparison with Trade Practice Provisions of NRA Codes.

Labor Studies

Cap and Cloth Hat Industry, Commission Report on Wage Differentials in
Earnings in Selected Manufacturing Industries, by States, 1933-35
Employment, Payrolls, Hours, and Wages in 115 Selected Code Industries 1933-35
Fur Manufacturing, Commission Report on Wages and Hours in
Hours and Wages in American Industry
Labor Program Under the National Industrial Recovery Act, The
  Part A. Introduction
  Part B. Control of Hours and Reemployment
  Part C. Control of Wages
  Part D. Control of Other Conditions of Employment
  Part E. Section 7(a) of the Recovery Act
Materials in the Field of Industrial Relations
PRA Census of Employment, June, October, 1933
Puerto Rico Needlework, Homeworkers Survey

Administrative Studies

Administrative and Legal Aspects of Stays, Exemptions and Exceptions, Code Amendments, Conditional Orders of Approval
Administrative Interpretations of NRA Codes
Administrative Law and Procedure under the NIRA
Agreements Under Sections 4(a) and 7(b) of the NIRA
Approve Codes in Industry Groups, Classification of
Basic Code, the -- (Administrative Order X-61)
Code Authorities and Their Part in the Administration of the NIRA
  Part A. Introduction
  Part B. Nature, Composition and Organization of Code Authorities

Part C. Activities of the Code Authorities
Part D. Code Authority Finances
Part E. Summary and Evaluation
Code Compliance Activities of the NRA
Code Making Program of the NRA in the Territories, The
Code Provisions and Related Subjects, Policy Statements Concerning
Content of NIRA Administrative Legislation
Part A. Executive and Administrative Orders
Part B. Labor Provisions in the Codes
Part C. Trade Practice Provisions in the Codes
Part D. Administrative Provisions in the Codes
Part E. Agreements under Sections 4(a) and 7(b)
Part F. A Type Case: The Cotton Textile Code
Labels Under NRA, A Study of
Model Code and Model Provisions for Codes, Development of
National Recovery Administration, The: A Review of its Organization and Activities
NRA Insignia
President's Reemployment Agreement, The
President's Reemployment Agreement, Substitutions in Connection with the
Prison Labor Problem under NRA and the Prison Compact, The
Problems of Administration in the Overlapping of Code Definitions of Industries and Trades, Multiple Code Coverage, Classifying Individual Members of Industries and Trades
Relationship of NRA to Government Contracts and Contracts Involving the Use of Government Funds
Relationship of NRA with States and Municipalities
Sheltered Workshops Under NRA
Uncodified Industries: A Study of Factors Limiting the Code Making Program

Legal Studies

Anti-Trust Laws and Unfair Competition
Collective Bargaining Agreements, the Right of Individual Employees to Enforce
Commerce Clause, Federal Regulation of the Employer-Employee Relationship Under the
Delegation of Power, Certain Phases of the Principle of, with Reference to Federal Industrial Regulatory Legislation
Enforcement, Extra-Judicial Methods of
Federal Regulation through the Joint Employment of the Power of Taxation and the Spending Power
Government Contract Provisions as a Means of Establishing Proper Economic Standards, Legal Memorandum on Possibility of
Industrial Relations in Australia, Regulation of
Intrastate Activities Which so Affect Interstate Commerce as to Bring them Under the Commerce Clause, Cases on
Legislative Possibilities of the State Constitutions
Post Office and Post Road Power -- Can it be Used as a Means of Federal Industrial Regulation?
State Recovery Legislation in Aid of Federal Recovery Legislation History and Analysis
Tariff Rates to Secure Proper Standards of Wages and Hours, the Possibility of Variation in
Trade Practices and the Anti-Trust Laws
Treaty Making Power of the United States
War Power, Can it be Used as a Means of Federal Regulation of Child Labor?

9768--4.

THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of those studies follows:

Automobile Manufacturing Industry
Automotive Parts and Equipment Industry
Baking Industry
Boot and Shoe Manufacturing Industry
Bottled Soft Drink Industry
Builders' Supplies Industry
Canning Industry
Chemical Manufacturing Industry
Cigar Manufacturing Industry
Coat and Suit Industry
Construction Industry
Cotton Garment Industry
Dress Manufacturing Industry
Electrical Contracting Industry
Electrical Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Finishing and Metal Coating Industry
Fishery Industry
Furniture Manufacturing Industry
General Contractors Industry
Graphic Arts Industry
Gray Iron Foundry Industry
Hosiery Industry
Infant's and Children's Wear Industry
Iron and Steel Industry
Leather Industry
Lumber and Timber Products Industry
Mason Contractors Industry
Men's Clothing Industry
Motion Picture Industry
Motor Vehicle Retailing Trade
Needlework Industry of Puerto Rico
Painting and Paperhanging Industry
Photo Engraving Industry
Plumbing Contracting Industry
Retail Lumber Industry
Retail Trade Industry
Retail Tire and Battery Trade Industry
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Shipbuilding Industry
Silk Textile Industry
Structural Clay Products Industry
Throwing Industry
Trucking Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Wholesale Fresh Fruit and Vegetable Industry
Wool Textile Industry

THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, Payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:
9768--5.